



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS

9:00 AM, WEDNESDAY, MAY 11, 2022

Barnes Sawyer Rooms - Deschutes Services Bldg - 1300 NW Wall St – Bend

(541) 388-6570 | www.deschutes.org

AGENDA

MEETING FORMAT: The Oregon legislature passed House Bill (HB) 2560, which requires that public meetings be accessible remotely, effective on January 1, 2022, with the exception of executive sessions. Public bodies must provide the public an opportunity to access and attend public meetings by phone, video, or other virtual means. Additionally, when in-person testimony, either oral or written is allowed at the meeting, then testimony must also be allowed electronically via, phone, video, email, or other electronic/virtual means.

Attendance/Participation options are described above. Members of the public may still view the BOCC meetings/hearings in real time via the Public Meeting Portal at www.deschutes.org/meetings

Citizen Input: Citizen Input is invited in order to provide the public with an opportunity to comment on any meeting topic that is not on the current agenda. Citizen Input is provided by submitting an email to: citizeninput@deschutes.org or by leaving a voice message at 541-385-1734. Citizen input received by noon on Tuesday will be included in the Citizen Input meeting record for topics that are not included on the Wednesday agenda.

Zoom Meeting Information: Staff and citizens that are presenting agenda items to the Board for consideration or who are planning to testify in a scheduled public hearing may participate via Zoom meeting. The Zoom meeting id and password will be included in either the public hearing materials or through a meeting invite once your agenda item has been included on the agenda. Upon entering the Zoom meeting, you will automatically be placed on hold and in the waiting room. Once you are ready to present your agenda item, you will be unmuted and placed in the spotlight for your presentation. If you are providing testimony during a hearing, you will be placed in the waiting room until the time of testimony, staff will announce your name and unmute your connection to be invited for testimony. Detailed instructions will be included in the public hearing materials and will be announced at the outset of the public hearing.

For Public Hearings, the link to the Zoom meeting will be posted in the Public Hearing Notice as well as posted on the Deschutes County website at <https://www.deschutes.org/bcc/page/public-hearing-notices>.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

CITIZEN INPUT: Citizen Input may be provided as comment on any topic that is not on the agenda.

***Note:** In addition to the option of providing in-person comments at the meeting, citizen input comments may be emailed to citizeninput@deschutes.org or you may leave a brief voicemail at 541.385.1734. To be timely, citizen input must be received by noon on Tuesday in order to be included in the meeting record.*

CONSENT AGENDA

- [1.](#) Consideration of Board Signature of Document No. 2022-420, Renewal of Contract for Yard Debris and Urban Wood Waste Management Services-Year 3
- [2.](#) Consideration of Board Signature of Document No. 2022-311, First Amendment to a Lease with St. Charles Health System, at 244 NW Kingwood Avenue, in Redmond
- [3.](#) Consideration of Board Signature of Document Number 2022-446, a Permanent Easement from Redmond School District 4J for the Tumalo Multi-Use Path Project
- [4.](#) Consideration of Board signature of Order No. 2022-024, to re-appoint Gregory P. Colvin as Justice of the Peace, Pro-tem.
- [5.](#) Consideration of Board Signature on Letters of Reappointment to the Deschutes County Extension/4H Advisory Council for Loren Kellogg, Carley Sanders and Peggy Kellogg, and for Reappointment to the Extension/4H Budget Committee for Peggy Kellogg.
- [6.](#) Consideration of Board Signature on Letters of Appointment to Kelley Hamby and Sunny Simpkins, Letters of Reappointment to Gena Goodman-Campbell, Will Groves and Joanne Richter and Letters of Thanks to Ted Wise and Shon Rae, to the Upper Deschutes Watershed Council.

ACTION ITEMS

- [7.](#) **9:05 AM** PRESENTATION: South County Update
- [8.](#) **10:05 AM** PROCLAMATION: Declaring May 14 2022 as Apraxia Awareness Day
- [9.](#) **10:15 AM** Consideration of Board Signature of Resolution No. 2022-026, Authorize Issuance of Debt for Negus and Potential Refinancing
- [10.](#) **10:30 AM** Consideration of Board Signature of Resolution No. 2022-027, Authorize the issuance of Hospital Revenue Refunding Bonds series 2022

11. **10:45 AM** Consideration of Board Signature of Resolution No. 2022-028, Capital Project Reimbursement Declarations
12. **11:00 AM** Discussion of Conversion of two limited-duration FTE's to permanent FTE's in the Sheriff's Office
13. **11:10 AM** Consideration of 2022 Illegal Marijuana Market Enforcement Grant Application
14. **11:20 AM** Notice of Intent to Award Contract to Pence Contractors for Construction Manager/General Contractor services for the Deschutes County Courthouse Expansion Project

LUNCH RECESS

15. **1:00 PM Public Hearing** – Community Development Department Draft Fiscal Year 2022-23 Work Plan
16. **1:30 PM** Westgate Phase 8 Improvement Agreement
17. **1:45 PM** Preparation for Public Hearing: Deschutes County Road Department Nighttime Noise Variance (File No. 247-22-000243-V)
18. **1:55 PM** Discussion of 2022 Spay & Neuter Grant Solicitation Program

OTHER ITEMS

These can be any items not included on the agenda that the Commissioners wish to discuss as part of the meeting, pursuant to ORS 192.640.

EXECUTIVE SESSION

At any time during the meeting, an executive session could be called to address issues relating to ORS 192.660(2)(e), real property negotiations; ORS 192.660(2)(h), litigation; ORS 192.660(2)(d), labor negotiations; ORS 192.660(2)(b), personnel issues; or other executive session categories.

Executive sessions are closed to the public; however, with few exceptions and under specific guidelines, are open to the media.

ADJOURN



Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, please call (541) 617-4747.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Enter BOCC meeting date requested

SUBJECT: Renewal of Contract for Yard Debris and Urban Wood Waste Management Services-Year 3

RECOMMENDED MOTION:

Move approval of the attached Contract Amendment with Bar Seven A Companies for an amount not to exceed \$425,000 for year 3 renewal of the Yard Debris and Urban Wood Waste Management Services Contract.

BACKGROUND AND POLICY IMPLICATIONS:

The Solid Waste Department collects yard debris at its rural transfer stations year round, and at Knott Landfill during the annual Fire Free collection event. Yard debris collected at the transfer stations is ground into a mulch and transported to Knott Landfill for use as alternate daily cover material. Lumber wood waste is collected and segregated at the Negus Transfer Station in Redmond and is ground and transported to facilities for remanufacture into wood products or as biomass for power plants where it is burned for electricity production.

In March, 2020, the Solid Waste Department solicited proposals for furnishing yard debris and wood waste management services for the program, which includes material grinding and trucking services. The Invitation to Bid was advertised in the Bend Bulletin and the Oregon Daily Journal of Commerce in March, 2020. During the solicitation period, a total of 6 contractors and plan centers registered and downloaded the contract documents. Bids were received from two contractors and Bar Seven A was determined to be the lowest responsible bidder for the program. The contract is issued as a one year agreement with the option for annual renewal, subject to mutual agreement between the County and the Contractor.

This amendment is for year 3 of the contract. Unit costs for services include a 15% increase related to increases in fuel, labor, equipment maintenance and support services for the services being provided by Bar Seven A. As contract costs are determined by the volumes of yard debris and wood waste received at the County's facilities, the contract amount is structured with a not-to-exceed amount of \$425,000.

BUDGET IMPACTS:

Funds are budgeted in the Solid Waste FY23 budget for these services.

ATTENDANCE:

Chad Centola, Director

Tim Brownell, Director

DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections **above** the Official Review line.

Date: 4/25/2022

Department: Solid Waste

Contractor/Supplier/Consultant Name: Bar Seven A Companies

Contractor Contact: Brian Skidgel **Contractor Phone #:** (541) 548-4747

Type of Document: Amendment to Services Agreement 2020-257

Goods and/or Services: Yard debris and wood waste management services.

Background & History: The Solid Waste Department collects yard debris at its rural transfer stations year round, and at Knott Landfill during the annual Fire Free collection event. The yard debris is ground into a mulch and transported to Knott Landfill for use as alternate daily cover material. Lumber wood waste is collected and segregated at the Negus Transfer Station in Redmond and is ground and transported to facilities for remanufacture into wood products or as biomass for power plants where it is burned for electricity production.

In March, 2020, the Solid Waste Department solicited proposals for furnishing yard debris and wood waste management services for the program, which includes material grinding and trucking services. The Invitation to Bid was advertised in the Bend Bulletin and the Oregon Daily Journal of Commerce in March, 2020. During the solicitation period, a total of 6 contractors and plan centers registered and downloaded the contract documents. Bids were received from two contractors and Bar Seven A was determined to be the lowest responsible bidder for the program. The contract is issued as a one year agreement with the option for annual renewal, subject to mutual agreement between the County and the Contractor.

This amendment is for year 3 of the contract. Unit costs for all services include a 15% increase due to increases in fuel, labor, maintenance and support services for the services being provided by Bar Seven A. As contract costs are determined by the volumes of yard debris and wood waste received at the County's facilities, the contract amount is structured with a not-to-exceed amount of \$425,000.

Agreement Starting Date: April 27, 2022 or the date all parties sign the contract amendment **Ending Date:** April 27, 2023

Annual Value or Total Payment: \$425,000

Insurance Certificate Received (check box)
Insurance Expiration Date: 11/30/2023

Check all that apply:

- RFP, Solicitation or Bid Process
- Informal quotes (<\$150K)
- Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

Funding Source: (Included in current budget? Yes No

If **No**, has budget amendment been submitted? Yes No

Is this a Grant Agreement providing revenue to the County? Yes No

Special conditions attached to this grant:

Deadlines for reporting to the grantor:

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: Yes No

Contact information for the person responsible for grant compliance:

Name:

Phone #:

Departmental Contact and Title: **Phone #:**

Department Director Approval: *Chad Centola* 4/26/22
Signature Date

Distribution of Document: Return documents to Solid Waste for distribution.

Official Review:

County Signature Required (check one):

- BOCC (if \$150,000 or more) – BOARD AGENDA Item
- County Administrator (if \$25,000 but under \$150,000)
- Department Director - Health (if under \$50,000)
- Department Head/Director (if under \$25,000)

Legal Review _____ Date _____

Document Number

REVIEWED

LEGAL COUNSEL

05/11/2022 Item #1.

For Recording Stamp Only

**DOCUMENT NO. 2022-420
AMENDING DESCHUTES COUNTY CONTRACT NO. 2020-257**

THAT CERTAIN AGREEMENT, Deschutes County Contract No. 2020-257 dated April 27, 2020, by and between DESCHUTES COUNTY, a political subdivision of the State of Oregon ("County") and Bar Seven A Companies ("Contractor"), is amended, effective upon signing of all parties, as set forth below. Except as provided herein, all other provisions of the contract remain the same and in full force.

County's performance hereunder is conditioned upon Contractor's compliance with provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235, which are hereby incorporated by reference. In addition Standard Contract Provisions contained in Deschutes County Code Section 2.37.150 are hereby incorporated by reference. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

The above listed contract is amended as follows:

Effective Date and Termination Date. The effective date of this Contract shall be ~~April 27, 2024~~ **April 27, 2022** or the date on which each party has signed this Contract, whichever is later. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when County accepts Contractor's completed performance, or on ~~April 27, 2022~~ **April 27, 2023**, whichever date occurs last. Contract termination shall not extinguish or prejudice County's right to enforce this Contract with respect to any default by Contractor that has not been cured.

Consideration:

- a. County shall pay Contractor on a unit price basis, as presented in the Bar Seven A Companies ~~2024~~ **2022** Contract Renewal Cost Proposal, which is attached hereto and made a part of this Contract by this reference.

The maximum compensation:

- a. The maximum compensation under this contract, including allowable expenses, is ~~\$459,000~~ **\$425,000**.

CONTRACTOR: BAR SEVEN A COMPANIES

Brian Skidgel
Authorized Signature

Dated this 26th of April, 2022.

COUNTY:

Dated this _____ of _____, 2022

BOARD OF COUNTY COMMISSIONERS

Patti Adair, Chair

ATTEST:

Recording Secretary

2022 CONTRACT RENEWAL COST PROPOSAL
Contract No. 2020-257
YARD DEBRIS AND WOOD WASTE MANAGEMENT SERVICES

Item	Unit Price
Mobilization	
• to Northwest Transfer Station	\$ 661.25 /each
• to Southwest Transfer Station	\$ 948.75 /each
• to Negus Transfer Station	\$ 327.75 /each
Transportation	
• From Northwest Transfer Station to Knott Landfill	\$ 16.04 /ton
• From Southwest Transfer Station to Knott Landfill	\$ 17.42 /ton
• From Negus Transfer Station to Knott Landfill	\$ 13.57 /ton
• From Negus Transfer Station to Bar-7-A Yard	\$ 11.73 /ton
Yard Debris Grinding	\$ 17.19 /ton
Urban Wood Waste Utilization	\$ 16.85 /ton
Base Fuel Surcharge (BFS)	\$ /gal
Fuel Surcharge Fuel surcharge pricing adjustments will be based on the following: <ul style="list-style-type: none"> • Fuel surcharges will be calculated incrementally on the basis of 7.5% for every \$1.00 change to fuel costs from the Base Fuel Surcharge (BFS). Bar-7-A shall furnish a monthly average fuel pricing (MAFP) summary from Carson Oil applied to work performed that month to substantiate fuel surcharge adjustments. • Fuel surcharges shall be calculated using the following formula: (MAFP - BFS) x .075 	

IN WITNESS HERETO, the undersigned has set his/her hand this 26th day of April, 2022 for Bar-7-A Companies.

Brian Skidgel 4/26/2022
Signature Date

Brian Skidgel
Printed Name



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, May 11, 2022

SUBJECT: Consideration of Document No. 2022-311, First Amendment to a Lease with St. Charles Health System, at 244 NW Kingwood Avenue, in Redmond

RECOMMENDED MOTION:

Move approval of Document No. 2022-311, a First Amendment to a Lease

BACKGROUND AND POLICY IMPLICATIONS:

In July 2021, Deschutes County purchased the Redmond property at 244 N. W. Kingwood Avenue, and assumed a lease with St. Charles Health System, Inc., (Assignment and Assumption of Lease Document No. 2021-527). The assumed lease was for 1,850 square feet of finished space and 910 square feet of unfinished space, for a total of 2,760 square feet (Suite C). On March 1, 2022, St. Charles Health System, Inc., requested a reduction to the lease of the unfinished space, beginning April 1st. The current cost per foot of \$1.60 per square foot is unchanged.

The additional 910 square feet will be incorporated into the Behavioral Health program, allowing for additional office and conference room space.

The current lease expiration date is June 30, 2024, with an additional (3) three year option to extend the lease to June 30, 2027.

BUDGET IMPACTS:

Lease will be reduced to \$2,960 per month from the current monthly amount of \$4,415.97. The CAMs payment amount of \$536.40 per month remains unchanged.

ATTENDANCE:

Kristie Bollinger, Property Manager

DESCHUTES COUNTY DOCUMENT SUMMARY

05/11/2022 Item #2.

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections **above** the Official Review line.

Date: March 21, 2022 **Department:** Administrative, Property Management Division

Tenant: St. Charles Health Systems, Inc.

Tenant Contact: Matt Swafford, CFO

Tenant Telephone #: 541-706-2791

Type of Document: First Amendment to a Lease

Goods and/or Services: None

Background & History:

BACKGROUND AND POLICY IMPLICATIONS:

In July 2021, Deschutes County purchased the Redmond property at 244 N. W. Kingwood Avenue, and assumed a lease with St. Charles Health System, Inc., (Assignment and Assumption of Lease Document No. 2021-527). The assumed lease was for 1,850 square feet of finished space and 910 square feet of unfinished space, for a total of 2,760 square feet (Suite C). On March 1, St. Charles Health System, Inc., requested a reduction to the lease of the unfinished space, beginning April 1st. The current cost per foot of \$1.60 per square foot is unchanged.

The current lease expiration date is June 30, 2024, and remains unchanged. Additionally, there is a remaining (3) three year option which would extend the lease to June 30, 2027.

Agreement Starting Date: April 1, 2022

Ending Date: June 30, 2027, if option is activated

Annual Value: \$35,520 base rent; CAMs \$6,436.80

Insurance Certificate Received (check box)
Insurance Expiration Date: 7/1/2022

Check all that apply: NONE

RFP, Solicitation or Bid Process

Informal quotes (<\$150K)

Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

Funding Source: (Included in current budget? Yes No)

3/22/2022

If **No**, has budget amendment been submitted? Yes No

Is this a Grant Agreement providing revenue to the County? Yes No

Departmental Contact and Title: Kristie Bollinger, Property Manager

Phone #: 541-385-1414

Department Director Approval:


Signature

5/3/2022
Date

Distribution of Document: Return copy to Property Management

Official Review:

County Signature Required (check one):

- BOCC (if \$150,000 or more) –
- County Administrator (if \$25,000 but under \$150,000)
- Department Director - Health (if under \$50,000)
- Department Head/Director (if under \$25,000)

Legal Review _____ Date _____

Document Number 2022-311

3/22/2022

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

**DOCUMENT NO. 2022-311
FIRST AMENDMENT TO AMENDED AND RESTATED COMMERCIAL LEASE**

Parties:

LANDLORD: DESCHUTES COUNTY, a political subdivision of the State of Oregon

TENANT: ST. CHARLES HEALTH SYSTEM, INC.

This First Amendment to Amended and Restated Commercial Lease (“Amendment”) is made and entered into effective **as of April 1, 2022** (“Effective Date”), for Suite C, with approximately 2,760 square feet, and described as certain real property located at 244 NW Kingwood Avenue, Redmond, Oregon, 97756, (the "Premises"); and by and between Deschutes County (“Landlord”) and St. Charles Health System, Inc., (“Tenant”).

WHEREAS, Landlord and Tenant entered into an Amendment and Restated Commercial Lease effective June 27, 2016 (the “Lease”).

WHEREAS, the Parties desire to amend the Original Agreement for a reduction of space of the Premises, reschedule the CAMs annual reconciliation period, and clarify the current CAMs amount,

NOW, THEREFORE, in consideration of the recitals, the mutual covenants, conditions and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Section 1. Occupancy, 1.1 The Premises. Entire section to be deleted and amended as follows:

~~1.1 The Premises. Subject to the terms and conditions of this lease, Landlord hereby leases to Tenant and Tenant leases from Landlord approximately 2760 square feet (Suite C) of the 12,000 square foot building commonly known as the Redmond Surgery Center, 244 NW Kingwood Avenue, Redmond, Oregon 97756 (the “Building”). The approximate 2,760 square feet is comprised of 1,850 square feet of finished space and 910 square feet of unfinished space as depicted on Exhibit A attached hereto (the “Premises”).~~

1.1 The Premises. Subject to the terms and conditions of this lease, Landlord hereby leases to Tenant and Tenant leases from Landlord approximately 1,850 square feet of finished space (Suite C) of the 12,000 square foot building commonly known as the Redmond Surgery Center, 244 NW Kingwood Avenue, Redmond, Oregon 97756 (the "Building"). The finished space is depicted on Exhibit A of Original Lease (the "Premises").

2. Section 1.7 Additional Rent. The section has an addition, as shown below in "(4)".

(4) The monthly CAM charges shall be reconciled from the current time through March 31, 2023, and thereafter shall be estimated annually. The current monthly CAM payment, in the amount of \$536.40, shall remain the amount paid until the March 31, 2023 reconciliation determines that the amount should be increased, decreased, or to remain the same.

3. Section 1.8 Escalation. For clarity, the cost per square foot is \$ 1.60 and shall increase per the terms of the Lease. Beginning July 1, 2022, no more than once annually, cost per square foot shall increase as follows:

<u>Original Amounts with 2,760 square feet of Leased Space</u>	
July 1, 2021 – June 30, 2022	\$4,415.97 per month
July 1, 2022 – June 30, 2023	\$4,482.21 per month
July 1, 2023 – June 30, 2024	\$4,549.44 per month

<u>Adjusted Amounts 1,850 square feet –Begins April 1, 2022 (Reduced by 910 sf)</u>	
April 1, 2021 – June 30, 2022	\$2,960.00 per month
July 1, 2022 – June 30, 2023	\$3,004.40 per month
July 1, 2023 – June 30, 2024	\$3,049.47 per month

Except as otherwise provided in this First Amendment, the terms and conditions of the entire Lease shall remain in effect.

Signature Page Follows

IN WITNESS WHEREOF, the parties have executed this Amendment effective as of the date and year set forth above.

LANDLORD: DATED this ____ day of _____, 2022

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, CHAIR

ATTEST: _____
ANTHONY DEBONE, VICE COMMISSIONER

Recording Secretary PHIL CHANG, COMMISSIONER

STATE OF OREGON)
)ss.
County of Deschutes)

Before me, a Notary Public, personally appeared PATTI ADAIR, ANTHONY DEBONE, and PHIL CHANG, of the above named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this _____ day of _____ 2022

Notary Public for Oregon My Commission Expires: _____

Signature Page Follows

TENANT: DATED this ____ day of 4/26/2022, 2022

ST. CHARLES HEALTH SYSTEM, INC.

DocuSigned by:
Matt Swafford
C2F1BE9DR1344AB...
By: Matt Swafford, CFO



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 11, 2022

SUBJECT: Consideration of Document Number 2022-446, a Permanent Easement from Redmond School District 4J for the Tumalo Multi-Use Path Project

RECOMMENDED MOTION:

Move approval of Document Number 2022-446.

BACKGROUND AND POLICY IMPLICATIONS:

The Oregon Department of Transportation (ODOT) and Deschutes County Road Department are delivering the Tumalo Multi-Use Path project under Agreement No. 2022-086. The project requires a stormwater detention facility for the proposed improvements on 4th Street located on property owned by the Redmond School District 4J. The District has executed a permanent easement document.

BUDGET IMPACTS:

None

ATTENDANCE:

Cody Smith, County Engineer (**REQUEST CONSENT AGENDA**)

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

After recording return to:
Deschutes County Road Department
61150 S.E. 27th Street
Bend, Oregon 97702

Permanent Storm Water Easement Deed

Redmond School District 4J, Grantor, does hereby grant to Deschutes County, a political subdivision of the State of Oregon, Grantee, a permanent easement over, across and through that certain parcel of land described in Exhibit A and shown in Exhibit B, attached hereto and by this reference incorporated herein, to construct and maintain storm water and infiltration facilities.

This Permanent Storm Water Easement ("Easement") is intended to grant the easement on the property described, not to convey fee title or any interest in the underlying property except as expressly stated herein. The easement granted shall not prevent Grantors from the use of said property provided, however, that such use shall not be permitted to interfere with the rights herein granted. Grantor shall not be permitted to endanger the lateral support of any facilities constructed within or adjacent to the easements granted herein.

Storm water and infiltration facilities constructed by Grantor on the property subject to this Easement shall not interfere with Grantor's use of and access to Grantor's adjacent school property. Prior to constructing any stormwater and infiltration facilities, Grantee will obtain Grantor's approval of the facility plans, and will incorporate and Grantee shall pay for reasonable safety and aesthetic improvements requested by Grantor, including, without limitation, fencing, landscaping, and signs. Grantee shall defend, save, hold harmless and indemnify Grantor and its officers, agents and employees from and against all claims, lawsuits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorney fees resulting from, arising out of, or relating to the activities or omissions of Grantee or its officers, employees, or agents under this Easement.

Grantor agrees that the consideration recited herein is just compensation for the property or property rights conveyed, including any and all damages to Grantor's remaining property, if any, which may result from the acquisition or use of said property and the construction or improvement in the public way.

Grantor(s) hereby covenant(s) to and with Grantee that it/they/are the owner of said property, which is free from all encumbrances, except for easements, conditions and restrictions of record, and will warrant and defend the easement rights herein granted from all lawful claims whatsoever, except as stated herein.

The true consideration for this conveyance is other consideration.

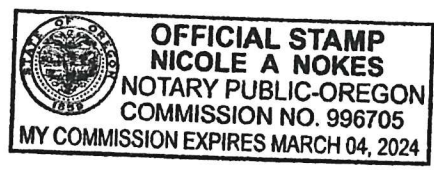
DATED this 2nd day of May, 2022.

[Signature]
Signed

Charan Clive
Printed Name

Superintendent
Title

STATE OF OREGON)
) SS.
County of Deschutes)



Before me, a Notary Public, personally appeared Charan Clive,
acknowledged the foregoing instrument, on behalf of Redmond School District 4J.

Dated this 2nd day of May, 2022.

Nicole Nokes
NOTARY PUBLIC FOR OREGON
My Commission Expires: 3-4-2024

ACCEPTANCE

Deschutes County, acting by and through its Board of County Commissioners, does hereby accept the foregoing Permanent Storm Water Easement on behalf of the public pursuant to ORS 93.808.

DATED this ____ day of _____, 20__.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, CHAIR

ANTHONY DEBONE, VICE-CHAIR

ATTEST:

PHIL CHANG, COMMISSIONER

Recording Secretary

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Anthony DeBone, Patti Adair, and Phil Chang, the above-named Board of County Commissioners of Deschutes County, Oregon, acknowledged the foregoing instrument, on behalf of Deschutes County, Oregon.

Dated this ____ day of _____, 20__.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A PERMANENT STORM WATER EASEMENT

A tract of land located within the NE 1/4 of Section 31, Township 16 South, Range 12 East, W.M., Deschutes County, Oregon more particularly described as follows:

Lot 12, Block 10, Laidlaw as recorded and filed in the Plat Cabinet A Page 38 of the plat records in the office of the County Clerk and the portion of the vacated alley which inured to said Lot 12.

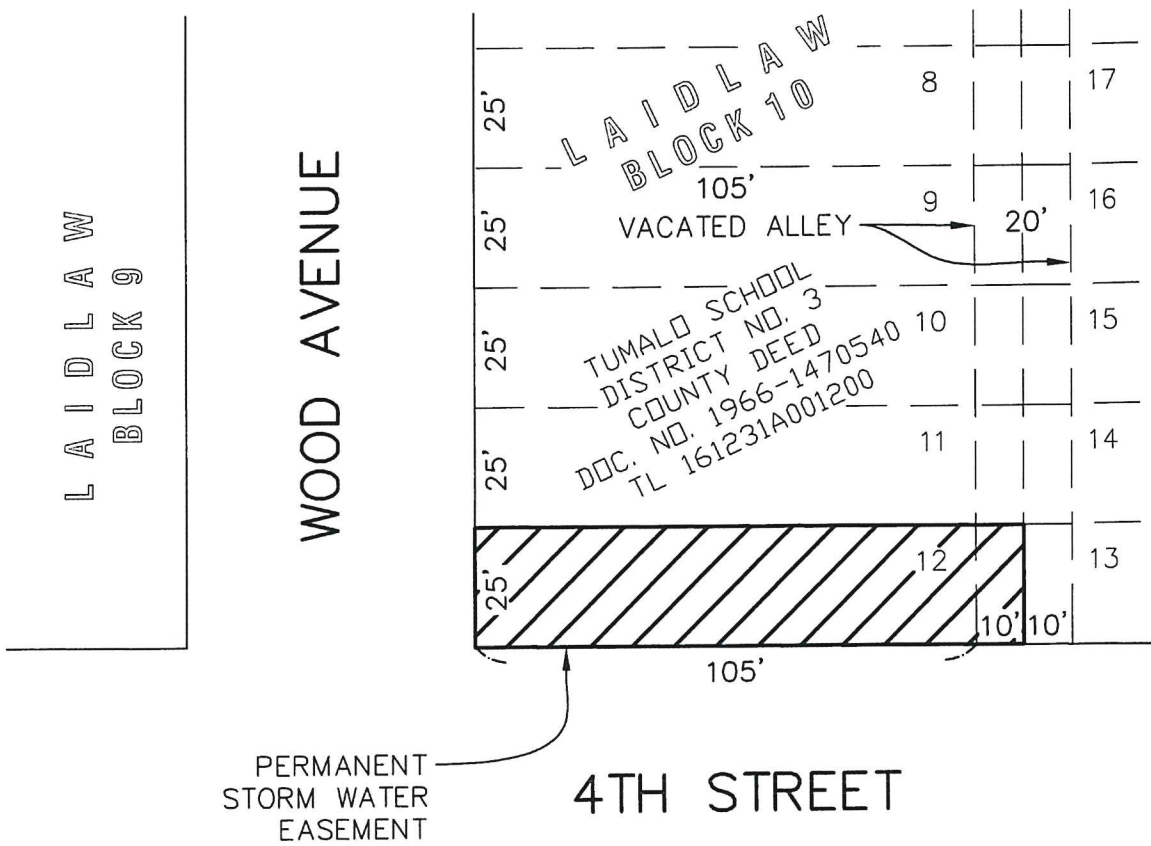
This tract described above is depicted on the attached map titled "EXHIBIT B – PERMANENT STORM WATER EASEMENT" which is incorporated by this reference.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Kevin Samuel

OREGON
DECEMBER 28, 2009
KEVIN R. SAMUEL
77040PLS

6-30-2022
RENEWAL



L A I D L A W
B L O C K 1 6

L A I D L A W
B L O C K 1 5

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
DEC. 28, 2009
KEVIN R. SAMUEL
77040PLS

RENEWS: 6/30/2022



EXHIBIT B - PERMANENT STORM WATER EASEMENT			
LOT 12 & VACATED ALLEY, BLOCK 10, LAIDLAW, NE 1/4 SEC. 31. T16S, R12E, WM			
DESCHUTES COUNTY SURVEYOR'S OFFICE 61150 S.E. 27TH STREET, BEND, OR. 97702	SCALE: 1"= 40'	DRAWN BY: KRS	DATE: 3/21/2022
FILE: Tumalo 4th & Wood Storm Ease.dwg			SHEET 1 OF 1



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 11, 2022

SUBJECT: Consideration of Board signature to re-appoint Gregory P. Colvin as Justice of the Peace, Pro-tem.

RECOMMENDED MOTION:

Move approval of Order Approving Appointment of Justice of the Peace Pro-Tem.

BACKGROUND AND POLICY IMPLICATIONS:

Gregory Colvin has served as Justice of the Peace, Pro-tem since 2001. His current term expires on May 15, 2022.

BUDGET IMPACTS:

Pro-tem salaries are provided for in the Justice Court budget.

ATTENDANCE:

None required.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Approving Appointment of Justice of the Peace Pro Tempore *

ORDER NO. 2022-024

WHEREAS, the Board of County Commissioners of Deschutes County, Oregon, finds that it is in the public interest to appoint a second Justice of the Peace Pro Tempore for the Justice Court of Deschutes County to serve in place and in stead of the elected Justice of the Peace during any temporary period of absence or incapacity of the elected Justice of the Peace; and

WHEREAS, the Board of County Commissioners of Deschutes County, Oregon, finds that Gregory P. Colvin, an attorney duly licensed to practice law in the State of Oregon, has sufficient qualifications to serve as Justice of the Peace; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDERS as follows:

Section 1. Pursuant to and in accordance with the provisions of ORS 51.260, Gregory P. Colvin hereby is appointed to serve as Justice of the Peace Pro Tempore of the Deschutes County Justice Court.

Section 2. The period of this appointment shall be from May 16, 2022 through May 15, 2023, unless said appointment is sooner terminated by action of the Board of County Commissioners of Deschutes County, Oregon.

Section 3. The appointed Justice of the Peace Pro Tempore shall only serve as acting Justice of the Peace during a period or periods of absence or incapacity of the elected Justice of the Peace as determined by the elected Justice of the Peace or the Board of County commissioners of Deschutes County, Oregon.

Dated this _____ of _____, 20__

BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 11, 2022

SUBJECT: PRESENTATION: South County Update

ATTENDANCE:

Todd Cleveland, CDD Environmental Onsite Supervisor

Sherry Pinner, Sr. Management Analyst

Peter Gutowsky, CDD Director

Representatives of the Department of Environmental Quality (DEQ)



MEMORANDUM

TO: Board of County Commissioners
Nick Lelack, County Administrator

FROM: Peter Gutowsky, CDD Director
Todd Cleveland, Environmental Onsite Supervisor
Sherri Pinner, Sr. Management Analyst

DATE: April 27, 2022

SUBJECT: South County Update

Summary

The Board of County Commissioners (Board) will conduct a work session on May 11, 2022 at 9 a.m. to discuss groundwater protection efforts in Southern Deschutes County (South County). The Oregon Department of Environmental Quality (DEQ) will be participating in the discussion.

An overview of the primary items of discussion will include:

DEQ staff participation

- An introduction of new Eastern Region DEQ staff and Onsite program staff
- A groundwater well sampling event update
- General discussion of groundwater protection in South County

Community Development staff

- Update CDD financial programs
- New developments regarding the New Neighborhood and groundwater protection programs

Financial Programs

Fund 296 – Groundwater Partnership Fund – Fund Balance \$109,300

Established to protect groundwater quality in South Deschutes County. Within this fund, programs exist to provide financial assistance to property owners not eligible to connect to a sewer system. Funding occurs through property sales and Pollution Reduction Credits of \$1,500 collected on properties located within The Reserve in the Pines development.

Community Development Programs:

- Nitrogen Reducing Onsite Wastewater Treatment Rebate Program: This program provides a maximum rebate of \$3,750 to property owners who have completed a retrofit of an existing onsite system serving a residence. The subject properties must be located within South Deschutes County and not in an area currently eligible for connection to a sewer system. Rebate details are as follows:

FY 22 (Through 4/22)	FY 21	FY 20	FY 19	FY 18
\$37,500	\$33,750	\$30,000	\$18,500	\$11,250
10 Rebates	9 Rebates	8 Rebates	5 Rebates	3 Rebates

- NeighborImpact Non-Conforming Loan Program: This loan program provides loans for low to moderate-income households in South Deschutes County to repair and/or replace failing onsite septic systems. This program began in 2011 and Deschutes County has contributed a total of \$240,000. Currently there is an available balance of \$78,730. This program has funded 14 loans. Of interest, for the time-period 2017-2021 there was no loan activity with activity resuming November 2021.

Fund 297 – New Neighborhood – Fund Balance \$94,300

Established to account for land sale proceeds and loan repayments for La Pine Special Sewer District loan assumed by City of La Pine through annexation in 2012, to accommodate the extension of sewer services to the entire New Neighborhood. The County aided the District in constructing the increased sewer capacity through the transfer of Federal Grant funds and a County loan of \$1,130,350. The loan funded through a Full Faith and Credit Obligation – Series 2003 bond.

County Bond Details:

Full Faith and Credit Obligation – Series 2003 - \$1,022,783 – 4.49%
 Full Faith and Credit Obligation – Series 2012 Refunding 2003 - \$840,321 – 2.86%
 Bond paid in full Oct 2021 – payoff amount \$568,806

La Pine Special Sewer District Loan:

Original Amount: \$1,109,801 @ 4.5%
 Interest rate restate to 2.86% in 2019, retroactive to 2012 (bond restructuring date) Reduced accrued interest \$105,100
 Obligation to Repay: System development charges (SDC’s) generated from development within the New Neighborhood are retained as loan payments.
 Termination: Obligation to repay the loan terminates in 50 years. (Contract executed March 2004)
 Balance @ 4/27/2022 = \$39,300 – est. 6 to 8 sewer SDC’s to pay loan in full. Once paid in full, sewer SDC collection will transfer to City of La Pine.

New Neighborhood Land Sales:

- Newberry Neighborhood Quadrants 2a and 2d – Notice of Intent to Award to DR Horton issued March 11, 2022.
- New Neighborhood 3 & 4 – 324 acres – plans underway to complete the master plan process.



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, May 11, 2022

SUBJECT: PROCLAMATION: Declaring May 14 2022 as Apraxia Awareness Day

ATTENDANCE:
Whitney Hale, Deputy County Administrator



For Recording Stamp Only

BEFORE THE BOARD OF COMMISSIONERS OF DESCHUTES COUNTY, OREGON

PROCLAMATION

Declaring May 14, 2022 as Apraxia Awareness Day

Whereas, May 14th marks Apraxia Awareness Day during which awareness will be raised throughout Deschutes County about Childhood Apraxia of Speech, an extremely challenging speech disorder in children.

Whereas, Childhood Apraxia of Speech (CAS) causes children to have significant difficulty learning to speak and is among the most sever speech deficits in children.

Whereas, the act of learning to speak comes effortlessly to most children, those with apraxia endure an incredible and lengthy struggle.

Whereas, without appropriate speech therapy intervention, children with apraxia are placed at a high risk for secondary impacts in reading, writing, spelling, and other school related skills.

Whereas, that such primary and secondary impacts diminish future independence and employment opportunities if not resolved or improved.

Whereas, most children with Apraxia of Speech will learn to communicate with their very own voice only if they receive early intervention, appropriate, intensive, and frequent speech therapy.

Whereas, it is imperative there be greater public awareness about Childhood Apraxia of Speech in Deschutes County among community members, physicians, education professionals, policy makers, and elected officials.

Whereas, funders such as insurance providers, schools, and policy makers are encouraged to recognize the critical need to provide adequate speech therapy and other services so that the impact of the disorder is minimized and so that thousands of affected children can grow into productive, contributing adult citizens.

Whereas, our highest respect goes to these children, as well as their families for their effort, determination, and resilience in the face of such obstacles.

Let it be resolved, that May 14th is “Apraxia Awareness Day” and citizens of Deschutes County and surrounding areas are encouraged to work within their communities to increase awareness and understanding of Childhood Apraxia of Speech.

Dated this ____ day of _____ 2022 by the Deschutes County Board of Commissioners.

Patti Adair, Chair

Anthony DeBone, Vice Chair

Phil Chang, Commissioner

ATTEST:

Recording Secretary



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 11, 2022

SUBJECT: Authorize Issuance of Debt for Negus and Potential Refinancing

RECOMMENDED MOTION:

Move approval of Resolution 2022-26.

BACKGROUND AND POLICY IMPLICATIONS:

Construction on the Negus Transfer Station improvements are scheduled to begin in July 2022. In order to provide the funding to complete the project, the BOCC must authorize the issuance of debt and delegate to County staff the authority to make decisions and enter into agreements to facilitate the debt issuance. The attached resolution limits the new debt issuance to \$21,900,000 and authorizes County staff to take all the steps necessary to complete the transaction.

Also included is the authority for County staff to refinance the callable portion of the outstanding series 2013 Bonds that were originally issued to finance Jail improvements. This transaction will only proceed if adequate savings can be achieved.

BUDGET IMPACTS:

The issuance costs will be covered by bond proceeds and future debt service will be paid by the Solid Waste Operation. Future debt service costs have been estimated and factored into the Solid Waste financial forecast.

ATTENDANCE:

Wayne Lowry, Interim Chief Financial Officer
Chad Centola, Director, Solid Waste Department

REVIEWED

LEGAL COUNSEL



For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

A Resolution Authorizing Financing of a *
Project in a Principal Amount not to * RESOLUTION NO. 2022-026
Exceed \$21,900,000 and Refunding the *
County’s Full Faith and Credit Bonds *

WHEREAS, Deschutes County, Oregon (the “County”) is authorized by Oregon Revised Statutes (“ORS”) Section 271.390 to enter into financing agreements to finance or refinance real or personal property which the Board of County Commissioners (the “Board”) determines is needed, and to authorize certificates of participation in the right to receive the payments due from the County under those financing agreements, so long as the estimated weighted average life of a financing agreement does not exceed the estimated dollar weighted average life of the real or personal property to be financed or refinanced by such agreement; and

WHEREAS, the County is authorized by ORS 287A.105 to incur bonded indebtedness within the meaning of Section 10, Article XI of the Oregon Constitution in an amount not to exceed one percent of the real market value of the taxable property in the County, in the form of a financing agreement, and to commit the County’s full faith and credit and taxing power pursuant to ORS 287A.315 to pay the amounts due under the financing agreement; and

WHEREAS, it is desirable to obtain financing to provide for the remodeling of the Negus Transfer Station (the “Project”) in an aggregate principal amount of not more than \$21,900,000 pursuant to ORS Sections 271.390 and ORS 287A.105, and other applicable provisions of ORS Chapter 287A; and

WHEREAS, the Project constitutes real or personal property, and the Board hereby determines the Project is needed; and

WHEREAS, the County issued its Full Faith and Credit Bonds, Series 2013 in the original principal amount of \$8,405,000 (the “Refundable Bonds”) to finance a jail expansion project, including a new medium/maximum security inmate housing unit, improvements and renovations to the existing jail facility and related site work (the “Refunded Project”); and

WHEREAS, the County may be able to reduce its debt service costs by refunding all or a portion of the outstanding Refundable Bonds, and it is desirable to refinance all or a portion of the outstanding Refundable Bonds pursuant to ORS Sections 271.390, 287A.105, and 287A.365 and other applicable provisions of ORS Chapter 287A; and

WHEREAS, the Refunded Project constitutes real or personal property, and the Board hereby determines that the Refunded Project was needed at the time it was financed and continues to be needed; and

WHEREAS, the County may incur expenditures (the “Expenditures”) to pay costs of the Project prior to the issuance of the financing agreement and the County wishes to declare its official intent to reimburse itself for any Expenditures the County may make from its own funds on the Project from the proceeds of the financing agreement, the interest on which may be excluded from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”); now therefore

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, as follows:

Section 1. Financing Agreement Authorized.

The County is hereby authorized to finance the Project under the authority of ORS Sections 271.390 and 287A.105, and other applicable provisions of ORS Chapter 287A, by entering into one or more financing agreements, loan agreements, credit facilities, or other financing documents (the “New Money Financing Agreements”) in an aggregate principal amount of not more than \$21,900,000. The County may also pay costs of issuing the New Money Financing Agreements and any associated Obligations (as defined below) with proceeds.

Section 2. Refinancing of the Refundable Bonds Authorized.

The County is also authorized to refinance all or a portion of the outstanding Refundable Bonds under the authority of ORS Sections 271.390, 287A.105, and 287A.365, and other applicable provisions of ORS Chapter 287A, by entering into one or more financing agreement, loan agreements, credit facilities or other financing documents (the “Refunding Financing Agreements” and together with the New Money Financing Agreements, the “Financing Agreements”) to refinance all or a portion of the outstanding Refundable Bonds. The Refunding Financing Agreements may be issued in an amount sufficient to pay and redeem the Refundable Bonds to be refunded, plus an amount sufficient to pay estimated costs related to accomplishing the refunding and the issuing of the Refunding Financing Agreement and any associated Obligations (as defined below);

Section 3. Delegation.

The County Treasurer, the interim or permanent Chief Financial Officer, the County Administrator, or the designee of either of those officials (each of whom is referred to herein as a “County Official”) are hereby authorized on behalf of the County and without further action by the Board, to:

- 3.1. Negotiate, execute and deliver the Financing Agreements which obligate the County to repay the financed amounts, with interest. Subject to the limitations of this Resolution, the Financing Agreements may be in such form and contain such terms as the County Official may approve, including covenants for the benefit of the lenders or credit enhancement providers.

3.2. Negotiate, execute and deliver one or more escrow agreements or similar documents (the “Escrow Agreements”) which provide for the issuance of one or more series of “certificates of participation” or “full faith and credit obligations” (the “Obligations”) which represent ownership interests in the financing payments due from the County under the Financing Agreements. Subject to the limitations of this Resolution, the Escrow Agreements and each series of Obligations may be in such form and contain such terms as the County Official may approve, including covenants for the benefit of the lenders or credit enhancement providers.

3.3. Determine whether the interest payable on each Financing Agreement will be includable in gross income or excludable from gross income under the Internal Revenue Code of 1986, as amended (the “Code”) and covenant for the benefit of the owners of tax-exempt obligations to comply with all provisions of the Code which are required for the interest component of financing payments payable under the related Financing Agreements to be excluded from gross income for federal income tax purposes.

3.4. Designate the Financing Agreements and Obligations as “qualified tax-exempt obligations” under Section 265(b) of the Code, if applicable.

3.5. Issue any Financing Agreement as a “taxable bond” bearing interest that is includable in gross income under the Code.

3.6. Deem final and authorize the distribution of a preliminary official statement for each series of Obligations, authorize the preparation and distribution of a final official statement or other disclosure document for each series of Obligations, and enter into agreements to provide continuing disclosure for owners of each series of Obligations.

3.7. Apply for and purchase ratings, municipal bond insurance, or other forms of credit enhancements for the Financing Agreements and Obligations, and enter into related agreements, as necessary.

3.8. Enter into additional covenants for the benefit of the purchasers of the Financing Agreements and Obligations which the County Official determines are desirable to sell the Financing Agreements and Obligations on favorable terms.

3.9. Engage the services of verification agents, escrow agents, paying agents and any other professionals whose services are desirable for the financings and enter into agreement with these service providers.

3.10. Select the maturities of any Refundable Bonds to be refunded.

3.11. Enter into one or more escrow deposit agreements for the refunding, take actions to call, defease and redeem all or any portion of the outstanding Refundable Bonds, file any required advance refunding plans with the State of Oregon.

3.12. Subject to this Resolution, determine the final principal amount of each Financing Agreement, the interest rate or rates which each Financing Agreement and each series of Obligations shall bear, and the County’s prepayment rights and other terms of each Financing Agreement and each series of Obligations.

3.13. Solicit competitive bids for the purchase of each series of the Obligations and award their sale to the bidder offering the most favorable terms to the County, select one or more underwriters, negotiate the terms of the sale of each series of Obligations, and sell that series to those underwriters; or select one or more commercial banks, negotiate the terms of the sale of each Financing Agreement and sell each Financing Agreement to those commercial banks.

3.14. Execute and deliver any other certificates or documents and take any other actions which the County Official determines are desirable to issue, sell and deliver the Financing Agreements and the Obligations and to accomplish the refunding of the Refundable Bonds in accordance with this Resolution.

Section 4. Security.

The Financing Agreements shall constitute “limited tax bonded indebtedness” as defined in ORS 287A.105 and the obligation of the County to make financing payments under the Financing Agreements is unconditional. Pursuant to ORS 287A.315, the County Official may pledge the County’s full faith and credit and taxing power within the limitations of Section 11 and 11b of Article XI of the Oregon Constitution, and any and all of the County’s legally available funds, including the proceeds of the Financing Agreements, to make the payments due under the Financing Agreements.

Section 5. Declaration of Intent to Reimburse.

The Board hereby declares its official intent to reimburse its Expenditures with the proceeds of the New Money Financing Agreements pursuant to United States Treasury Regulation 1.150-2.

Section 6. Appointment of Bond Counsel and Municipal Advisor.

The law firm of Hawkins Delafield & Wood LLP is appointed as bond counsel to the County, and PFM Financial Advisors LLC is appointed as municipal advisor to the County, with respect to the Obligations.

Section 7. Effective Date.

This Resolution shall take effect immediately upon its adoption.

DATED this 11th day of May, 2022.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, CHAIR

ANTHONY DEBONE, VICE CHAIR

PHIL CHANG, COMMISSIONER

ATTEST:

Recording Secretary

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Patti Adair	_____	_____	_____	_____
Anthony DeBone	_____	_____	_____	_____
Phil Chang	_____	_____	_____	_____



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 11, 2022

SUBJECT: *Authorize the issuance of Hospital Revenue Refunding Bonds series 2022*

RECOMMENDED MOTION:

Move approval of Resolution 2022-027

BACKGROUND AND POLICY IMPLICATIONS:

In order to facilitate the issuance of certain debt by the St Charles Health System, the County established the Hospital Authority of Deschutes County many years ago. The Hospital system, a nonprofit 501 (c)(3), is planning to refund its series 2014 bonds in the estimated amount of \$80,000,000 in order to realize interest cost savings over the remaining life of the bonds.

The Hospital Authority held a required hearing on May 6, 2022 to provide members of the public an opportunity to express their views regarding the issuance of the 2022 bonds. A copy of the Public Hearing Report will be available as an attachment to the resolution.

Approval of Resolution 2022-027 by the Board of County Commissioners is the final step to provide the Authority to St Charles Health System to move forward with the Bond Issuance.

BUDGET IMPACTS:

All Bonds issued by the Health System are payable solely from the revenues of the Health System and do not constitute obligations of Deschutes County.

ATTENDANCE:

*Wayne Lowry, Interim Chief Financial Officer
Commissioner Patty Adair – Hospital Facility Board Member*

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution Approving Issuance of *
Hospital Revenue Refunding Bonds, Series * RESOLUTION NO. 2022-027
2022 (St. Charles Health System) By The *
Hospital Facility Authority of Deschutes *
County, Oregon. *

WHEREAS, the Board of County Commissioners of Deschutes County, Oregon (“County”) acknowledges that The Hospital Facility Authority of Deschutes County, Oregon (“Authority”) has received a request from St. Charles Health System, Inc., a nonprofit corporation organized and existing under the laws of the State of Oregon (“Borrower”) to issue Revenue Refunding Bonds, Series 2022 (St. Charles Health System), in one or more series (the “2022 Bonds”), in an aggregate principal amount not to exceed \$80,000,000; and

WHEREAS, the proceeds of the 2022 Bonds are expected to be used for the purpose of refunding the Authority’s previously issued Revenue Bonds, Series 2014, the proceeds of which were used, in part, to finance costs of capital construction, acquisition, development, improvements, renovations and equipment at the healthcare facilities of the Borrower located in (i) Deschutes County at: 2500 NE Neff Road, Bend, OR 97701, 2600 NE Neff Road, Bend, OR 97701, 2042 NE Williamson Court, Bend, OR 97701, 2084 NE Professional Court, Bend, OR 97701, 2100 NE Wyatt Court, Bend, OR 97701, 2275 NE Doctors Drive, Suite 5, Bend, OR 97701, 2542 NE Courtney Drive, Bend, OR 97701, 2965 NE Conners Ave., Suite 127, Bend, OR 97701, 1253 NW Canal Blvd., Redmond, OR 97756, 1541 NW Canal Blvd., Redmond, OR 97756, 1245 NW 4th Street, Suite 101, Redmond, OR 97756, 211 NW Larch Ave., Redmond, OR 97756, 213 NW Larch Ave., Suite B, Redmond, OR 97756, 655 NW Jackpine Ave., Redmond, OR 97756 and 630 N Arrowleaf Trail, Sisters, OR 97759; (ii) the City of Madras, Oregon at: St. Charles Madras (formerly Mountain View Hospital) and its outpatient clinic facilities located at 470 NE “A” Street, 480 NE “A” Street and 76 NE 12th Street, each in Madras, Oregon 97741; and (iii) the City of Prineville, Oregon at: 384 SE Combs Flat Road, Prineville, Oregon 97754 (collectively, the “Projects”); and

WHEREAS, the principal of and interest on the 2022 Bonds will not constitute a debt of the County nor shall the 2022 Bonds be payable from a tax of any nature levied upon any property

within the County nor any other political subdivision of the State of Oregon. The 2022 Bonds will be payable only from the revenues and resources provided by the Borrower; and

WHEREAS, the Internal Revenue Code of 1986 (the “Code”) authorizes the issuance of revenue bonds for a “qualified 501(c)(3) entity,” such as the Borrower; and

WHEREAS, Section 147(f) of the Code requires that qualified 501(c)(3) bonds be approved by the applicable elected representatives of the governmental unit having jurisdiction over the area in which the projects are located and the Board of County Commissioners of Deschutes County are the applicable elected representatives of the governmental unit having jurisdiction over the portion of the projects being refinanced with the proceeds of the 2022 Bonds located in the County; and

WHEREAS, on May 6, 2022, the Authority adopted a Resolution authorizing the issuance of the 2022 Bonds and the execution and delivery of an Intergovernmental Agreement (“Intergovernmental Agreement”) between the Authority, the City of Madras, Oregon, and the City of Prineville, Oregon, pursuant to ORS 190.010 which designates the Authority as the issuer of the 2022 Bonds. Such Intergovernmental Agreement will help provide cost savings to the nonprofit healthcare facilities of the Borrower; and

WHEREAS, on April 26, 2022, the Common Council of the City of Madras conducted a public hearing and adopted a Resolution approving the issuance of the 2022 Bonds by the Authority for the portion of the Projects located in its jurisdiction and authorizing the execution and delivery of the Intergovernmental Agreement; and

WHEREAS, on April 26 2022, the City Council of the City of Prineville conducted a public hearing and adopted a Resolution approving the issuance of the 2022 Bonds by the Authority for the portion of the Projects located in its jurisdiction and authorizing the execution and delivery of the Intergovernmental Agreement; and

WHEREAS, on May 6, 2022, the Authority conducted a public hearing, adequate notice of this hearing having been published pursuant to Section 147(f) of the Code, to provide a reasonable opportunity for members of the public to express their views regarding the issuance of the 2022 Bonds and the uses and purposes of the proceeds of the 2022 Bonds; and

WHEREAS, a copy of the Public Hearing Report to the Board of County Commissioners submitted by the Chair of the Authority is attached hereto as Exhibit “A”; and

WHEREAS, the County finds that it would be in the best interest of the County to approve of the issuance of the 2022 Bonds by the Authority pursuant to the requirements of Section 147(f) of the Code;

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, as follows:

Section 1. As the applicable elected representatives of the governmental unit having jurisdiction over the Authority and over the area in which a portion of the Projects are located, and having concluded that a public hearing was validly held to provide a reasonable opportunity

for members of the public to express their views regarding the issuance of the 2022 Bonds and the uses and purposes of the proceeds of the 2022 Bonds, the Board of County Commissioners of Deschutes County, Oregon, approves of the issuance of the 2022 Bonds by the Authority.

Section 2. This resolution is effective immediately upon passage.

Dated this 11th day of May, 2022.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

Exhibit “A”

Public Hearing Report to the Board of County Commissioners

REVIEWED

LEGAL COUNSEL



For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

A Resolution Delegating Authority to the Chief Finance Officer or the County Administrator of the County to Make Future Reimbursement Declarations * * * RESOLUTION NO. 2022-028 * *

WHEREAS, the United States Internal Revenue Code of 1986, as amended, and its regulations require that issuers of tax-exempt obligations that wish to use the proceeds of tax-exempt debt to reimburse itself for project costs paid prior to issuing such debt officially declare its intention to reimburse such expenditures; and

WHEREAS, subject to certain exceptions, such declarations must be made no later than 60 days after the expenditures to be reimbursed are paid; and

WHEREAS, Section 1.150-2 of the Federal Income Tax Regulations permits issuers of tax-exempt obligations to delegate the authority to make reimbursement declarations to a representative of the issuer.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, as follows:

Section 1. The Chief Finance Officer and the County Administrator of the County are each hereby authorized to make declarations of intent to reimburse under Section 1.150-2 of the Federal Income Tax Regulations on behalf of the County and without further action by the Board of Commissioners of the County. All such future declarations shall be in writing and the original or a certified copy of each declaration shall be maintained in the public records of the County.

Section 2 Effective Date.

This Resolution shall take effect immediately upon its adoption.

DATED this 11th day of May, 2022.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, CHAIR

ANTHONY DEBONE, VICE CHAIR

PHIL CHANG, COMMISSIONER

ATTEST:

Recording Secretary

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Patti Adair	_____	_____	_____	_____
Anthony DeBone	_____	_____	_____	_____
Phil Chang	_____	_____	_____	_____



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 11, 2022

SUBJECT: Consideration of Board Signature of Resolution No. 2022-028, Capital Project Reimbursement Declarations

RECOMMENDED MOTION:

Move approval of Resolution 2022-28.

BACKGROUND AND POLICY IMPLICATIONS:

Given that the County is contemplating a number of capital projects over the next several years, the funding of such projects may entail the issuance of tax-exempt debt. Part of the process in considering certain capital projects and how they will be financed is to hire professionals to prepare designs and estimates on the projected costs of such projects. IRS code only allows an issuer of tax-exempt debt to use bond proceeds to pay for costs incurred after the date of the bonds unless the issuer has formally declared its intention to issue debt and reimburse itself for expenditures made up to 60 days prior to the declaration.

A strategy to maximize the project costs that can be paid for with bond proceeds is to issue a formal declaration as early in a project's life as possible in order to recoup any funds spent prior to the issuance of bonds. This declaration does not obligate the County to issue debt, it only allows the County to reimburse itself for project expenditures made prior to the issuance of debt if debt is determined to be the method of finance for the project.

The attached resolution 2022-028 delegates the authority to make such declarations to the Chief Financial Officer and the County Administrator.

BUDGET IMPACTS:

Approval of the resolution allows all costs spent on a project to be otherwise eligible for debt financing.

ATTENDANCE:

Wayne Lowry, Interim Chief Financial Officer



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 11, 2022

SUBJECT: Discussion of Conversion of two limited-duration FTE's to permanent FTE's.

RECOMMENDED MOTION:

If there is support for this discussion then Resolution 2022-030 will be presented for a motion directly following this staff report.

BACKGROUND AND POLICY IMPLICATIONS:

The purpose is to convert 2.0 Criminal Detectives from limited-duration to permanent. These spots were originally limited as they were tied to the IMMEGP grant and funding from the County's portion of tax from the legal sale of marijuana. Both positions have remained after most of the original funding sources went away and are now partially supported through law enforcement countywide district taxes. Our intention is to continue and to grow the program, and therefore we request these positions be permanent.

BUDGET IMPACTS:

None. Positions will be funded primarily through law enforcement countywide district taxes and potentially some funding through marijuana tax.

ATTENDANCE:

Joe Brundage, Business Manager, Dan Emerson, Budget Manager.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution Converting *
FTE Within the 2021-22 * RESOLUTION NO. 2022-030
Deschutes County Budget *

WHEREAS, the Deschutes County Sheriff's Office presented to the Board of County Commissioners on 5/11/2022, with regards to the conversion of 2.0 limited duration criminal detective positions to regular duration, and

WHEREAS, Deschutes County Policy HR-1 requires that the creation of or increase in FTE outside the adopted budget be approved by the Board of County Commissioners; now, therefore,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, as follows:

Section 1. That the following FTE be added:

Job Class	Type	Duration if Limited Duration	FTE
Criminal Detective (2071)	Converting LTD to Regular		
Criminal Detective (2183)	Converting LTD to Regular		
Total FTE			

Section 2. That the Human Resources Director make the appropriate entries in the Deschutes County FTE Authorized Positions Roster to reflect the above FTE changes.

DATED this _____ day of May, 2022.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ATTEST:

ANTHONY DEBONE, Vice-Chair

Recording Secretary

PHIL CHANG, Commissioner



Grant Application Request

Date: May 5, 2022

- 1. Name of Grant: 2022 Illegal Marijuana Market Enforcement Grant
- 2. Deschutes County contact:
 - a Captain Paul Garrison, Deschutes County Sheriff's Office
 - b Finance Manager, Joe Brundage, Deschutes County Sheriff's Office
- 3. Funding Agency: Oregon Criminal Justice Commission
- 4. Grant Amount: \$1,473,072.98
- 5. Does the grant require matching funds? Yes No

If yes, how much are the required matching funds and what funds does the department plan to use for matching funds? N/A

- 6. Grant duration: April 1, 2022 through December 31, 2025
- 7. Grant application deadline: May 11, 2022
- 8. Grant description: In 2018, the Oregon Legislature passed Senate Bill 1544, which created the Illegal Marijuana Market Enforcement Grant Program to assist local law enforcement agencies in their efforts to address the illegal marijuana market in Oregon. This grant is available for funding the addition of law enforcement officers to investigate illegal marijuana market cases, as well as training opportunities that assist in addressing illegal marijuana markets.

The District Attorney’s Office, Bend Police Department and Deschutes County Sheriff’s Office collaborated to complete a joint application through the Illegal Marijuana Market Enforcement Grant Program to hire investigators and a data analyst to focus on financial analysis and investigation of illegal marijuana grows, sales, shipments out of state and organized crime. This grant has been active since July 2018.

Data Analyst of Marijuana Enforcement Program: July 2018 – April 2022

- 105 total cases opened
- 50 cases with some type of seizure or a arrest
- 50 search warrants
- 68 arrests
- 94 guns
- 14,265.7 lbs of dried marijuana
- 96.6 lbs of edibles
- 72,582 marijuana plants
- 100+ vape cartridges
- 30.7 lbs of marijuana concentrate
- 226.1 lbs of BHO
- 16 BHO labs
- \$1,053,643.73 cash seized
- \$2,678,447.23 property seized (cars, jewelry, gold/silver, residences, etc.)

During this time-frame we have had 1 – 2 marijuana enforcement deputies to handle these cases. There is a significant need to create a full-time dedicated marijuana enforcement team. The illegal marijuana market in Deschutes County has drastically increased right along with our steady population growth. According to the U.S. Census, Deschutes County population was at 204,801 as of July 2021. We are at an annual population increase of 3.3%. We need the staffing to be able to provide efficient law enforcement response for illegal marijuana operations investigations, which will in turn create a deterrent for establishment of future illegal grow operations in our county.

The sheriff’s office is requesting approval to apply for funding to hire two (2) full-time Marijuana Enforcement Deputies and one (1) full-time Marijuana Enforcement Sergeant.

9. Requested budget (please provide additional line item details under the broad categories listed below):

	Amount Requested
Personnel Services	\$1,409,058.98
Travel/Training/Conferences	\$64,014.00
Total	\$1,473,072.98

10. If the grant request includes FTEs, please fill out the table below.

Position Title	Limited duration or regular position?	FTEs	Notes
Sergeant	Limited Duration	1	
Deputy	Limited Duration	2	

11. Other information: Reporting

If awarded this grant, the Deschutes County Sheriff's Office will be responsible for complete and accurate internal controls and reporting quarterly financial expenditure reports to the Criminal Justice Commission as required in the award recipient instructions and procedures.

Please contact Capt. Paul Garrison or Business Manager, Joe Brundage at 541-388-6655 or Jennifer Hill at 541-617-3347 if you have questions concerning this application.

Commissioner/County Administrator Approval: _____
Date: _____

Document No: 2022-453


 on behalf of
 Sheriff L. Shene Nelson
 SHERIFF'S APPROVAL



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 11, 2022

SUBJECT: DCSO Illegal Marijuana Market Enforcement Grant Application

RECOMMENDED MOTION:

Consideration for Board of County Commissioners to approve the 2022 Illegal Marijuana Market Enforcement Grant Application for Deschutes County Sheriff's Office. This grant is offered through the Oregon Criminal Justice Commission (CJC) to fund activities associated with addressing unlawful marijuana cultivation and distribution operations.

DCSO is requesting funds to create two marijuana enforcement deputy positions and one marijuana enforcement sergeant position. Funds are also requested for specialized training in marijuana enforcement for each new position.

BACKGROUND AND POLICY IMPLICATIONS:

The Sheriff's Office is collaborating with the District Attorney's Office and Bend Police Department for countywide illegal marijuana market enforcement. This collaboration is funded through the 2021 CJC Illegal Marijuana Market Enforcement Grant. Due to the efforts of this collaboration and the success with our investigations and dismantling of illegal marijuana operations, DCSO is in need of additional personnel. This 2022 grant will provide the funds needed for this addition.

BUDGET IMPACTS:

This grant will only cover personnel wages for the three new positions, as well as the specialized required training for the duration of the grant from April 1, 2022 through December 31, 2025. The Sheriff's Office approved budget will cover all standard provisions normally and routinely provided for all deputies and sergeants.

ATTENDANCE:

Captain Paul Garrison, Deschutes County Sheriff's Office

ADDITIONAL NOTES:

The 2022 CJC Illegal Marijuana Market Enforcement Grant application deadline is May 11, 2022. However, our grant administrator for the Sheriff's Office is on pre-approved leave from May 5 through May 11, 2022. Due to this schedule conflict, the Sheriff's office has submitted this application prior to her departure, and prior to the scheduled BOCC meeting on May 11th.



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 11, 2022

SUBJECT: Consideration of 2022 Illegal Marijuana Market Enforcement Grant Application

OAR 137-047-0610**Notice of Intent to Award**

(1) Notice of Intent to Award. The Contracting Agency shall provide Written notice of its intent to Award to all Bidders and Proposers pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Contracting Agency determines that circumstances justify prompt execution of the Contract, in which case the Contracting Agency may provide a shorter notice period. The Contracting Agency shall document the specific reasons for the shorter notice period in the Procurement file.

(2) Finality. The Contracting Agency's Award shall not be final until the later of the following:

(a) The expiration of the protest period provided pursuant to OAR 137-047-0740; or

(b) The Contracting Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.

Statutory/Other Authority: ORS 279A.065 & 279B.135

Statutes/Other Implemented: ORS 279B.135

2022 DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections **above** the Official Review line.

Date: May 4, 2022

Department: Facilities

Contractor/Supplier/Consultant Name: Pence Contractors LLC

Contractor Contact: John Williamson

Contractor Phone #: 541-323-3393

Type of Document: Notice of Intent to Award

Goods and/or Services: Construction Manager/General Contractor Services

Background & History:

The Facilities Department conducted a publicly advertised solicitation for CM/GC services for the Courthouse Expansion project. Pence Contractors was the highest scoring proposer. Pence will provide pre-construction services which include but are not limited to: cost estimates, constructability reviews, project schedule development and analysis, site investigations, logistics planning, and development of the Guaranteed Maximum Price (GMP).

The approval of the Notice of Intent to Award contract will initiate a 7 day protest period after which the County will enter into a contract with Pence Contractors for CM/GC services. This portion of the project is budgeted in Campus Improvements Fund 463 for FY 22 and is proposed for FY 23.

Agreement Starting Date: N/A

Ending Date: N/A

Annual Value or Total Payment: N/A

Insurance Certificate Received (check box) N/A

Insurance Expiration Date: _____

Check all that apply:

X RFP, Solicitation or Bid Process

Informal quotes (<\$150K)

Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

Funding Source: (Included in current budget? Yes No

If **No**, has budget amendment been submitted? Yes No

Is this a Grant Agreement providing revenue to the County? Yes

No



BOARD OF COUNTY COMMISSIONERS

May 11, 2022

Sent via electronic mail & first-class mail

Pence Contractors LLC
Attn: John Williamson, Project Executive
1051 NW Bond Street Suite 310
Bend, Oregon 97701
John.williamson@pence.net

RE: Contract for Deschutes County – Courthouse Expansion Project

NOTICE OF INTENT TO AWARD CONTRACT

On May 11, 2022, the Board of County Commissioners of Deschutes County, Oregon, considered proposals for the above-referenced project. The Board of County Commissioners determined that the successful proposer for the project was Pence Construction with offices in Lake Oswego, Oregon, and Bend, Oregon.

This Notice of Intent to Award Contract is issued pursuant to Oregon Revised Statute (ORS) 279B.135. Any entity which believes that they are adversely affected or aggrieved by the intended award of contract set forth in this Notice may submit a written protest within seven (7) calendar days after the issuance of this Notice of Intent to Award Contract to the Board of County Commissioners of Deschutes County, Oregon at Deschutes Services Building, 1300 NW Wall Street, Bend Oregon, 97703.

The seven (7) calendar day protest period will expire at 5:00 PM on Tuesday, May 17, 2022.

Any protest must be in writing and specify any grounds upon which the protest is based. Please refer to Oregon Administrative Rules (OAR) 137-047-0740. If a protest is filed within the protest period, a hearing will be held at a regularly scheduled business meeting of the Board of County Commissioners of Deschutes County, Oregon, acting as the Contract Review Board, in the Deschutes Services Building, 1300

NW Wall Street, Bend, Oregon 97703 within two (2) weeks of the end of the protest period.

If no protest is filed within the protest period, this Notice of Intent to Award Contract becomes an Award of Contract without further action by the County unless the Board of County Commissioners, for good cause, rescinds this Notice before the expiration of the protest period.

If you have any questions regarding this Notice of Intent to Award Contract or the procedures under which the County is proceeding, please contact Deschutes County Legal Counsel: telephone (541) 388-6625, Fax (541) 383-0496; or email to david.doyle@deschutes.org.

Be advised that if no protest is received within the stated time period, the County is authorized to process the contract administratively.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
DESCHUTES COUNTY, OREGON

Commissioner Patti Adair, Chair

Enclosure:
OAR 137-047-0610

Cc w/ enclosure:

Griffin Construction
Sam Griffin
1411 NW Murphy Court
Prineville Oregon 97754

Skanska USA
Bob Moro
2275 NE Doctors Drive, Suite 3
Bend, Oregon 97701

Kirby Nagelhout Construction Company
Jeff Deswert
63049 Lower Meadow Drive
Bend, Oregon 97701

SunWest Builders
Steve Buettner
2642 SW 4th, PO Box 489
Redmond, Oregon 97756



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 11, 2022

SUBJECT: Notice of Intent to Award Contract to Pence Contractors for Construction Manager/General Contractor services for the Deschutes County Courthouse Expansion Project

RECOMMENDED MOTION:

Move approval of Document No. 2022-445 Notice of Intent to Award Contract to Pence Contractors.

BACKGROUND AND POLICY IMPLICATIONS:

Pence Contractors to provide CM/GC services for the construction of a +/- 40,000 square foot addition to the Deschutes County Courthouse.

The Facilities Department issued a publicly advertised RFP for a Construction Manager/General Contractor for the Courthouse Expansion project in accordance with ORS 279C. Five firms provided responsive proposals which were reviewed by a scoring committee made up of three community members and representatives from the State Circuit Court, Sheriff's Office and the Facilities Department.

Pence Contractors, a firm with offices in Bend, Salem, and Lake Oswego, was the highest scoring proposer and the review committee recommends the selection of Pence Contractors as the Construction Manager/General Contractor for the expansion project.

BUDGET IMPACTS:

At the end of the protest period, the County will enter into a contract with Pence Contractors.

ATTENDANCE: Lee Randall, Facilities Director



**BOARD OF
COMMISSIONERS**

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 11, 2022

SUBJECT: Public Hearing – Community Development Department Draft Fiscal Year 2022-23 Work Plan

RECOMMENDED MOTION:

Move approval of ____.

BACKGROUND AND POLICY IMPLICATIONS:

Each spring, CDD prepares an annual work plan describing proposed projects for the coming fiscal year. A review of the draft work plan provides the Planning Commission, Historic Landmarks Commission, County Administration, CDD’s customers, partner agencies, and the Board an opportunity to provide input, including additions, modifications and possible re-prioritization. The work plan describes the most important objectives and proposed projects in each CDD division based on:

- 1. Board annual goals and policies;
- 2. Carry-over projects from current or prior years;
- 3. Changes in state law;
- 4. Grants/funding sources; and
- 5. Public comments.

It also serves as the context within which new projects that arise during the course of the year are prioritized and initiated.

BUDGET IMPACTS:

None.

ATTENDANCE:

*Peter Gutowsky, CDD Director
Will Groves, Planning Manager*



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Peter Gutowsky, AICP, Director
CDD Management Team

DATE: May 4, 2022

SUBJECT: May 11 Public Hearing – Community Development Department Draft Fiscal Year 2022-23 Work Plan

I. SUMMARY

The purpose of this Board of County Commissioners (Board) public hearing on the Community Development Department (CDD) 2022-23 Work Plan is to accept public comments for consideration in the adoption of the final CDD 2022-23 Work Plan (Attachment 1).

II. BACKGROUND

Each spring, CDD prepares an annual work plan describing proposed projects for the coming fiscal year. A review of the draft work plan provides the Planning Commission, Historic Landmarks Commission, County Administration, CDD’s customers and partner agencies, and the Board an opportunity to provide input, including additions, modifications and possible re-prioritization. The work plan describes the most important objectives and proposed projects in each CDD division based on:

1. Board annual goals and policies;
2. Carry-over projects from current or prior years;
3. Changes in state law;
4. Grants/funding sources; and
5. Public comments.

It also serves as the context within which new projects that arise during the course of the year are prioritized and initiated.

The Board conducted a work session on the Draft CDD 2022-23 Work Plan on April 27.

III. PLANNING COMMISSION RECOMMENDATIONS & PUBLIC COMMENTS

The Planning Commission conducted a work session, public hearing, and deliberation on the Draft FY 2022-23 Planning Division Work Plan in March and April. The Planning Division and Commission received public

comments on the draft work plan.¹ Staff presented three tables (below) to facilitate the Planning Commission’s deliberation and recommendations. Staff acknowledged CDD is experiencing significant retention and recruitment challenges that may impact the Planning Division’s capacity to initiate projects in Tables 1-3 next fiscal year.

The Planning Commission on April 14 endorsed the projects listed in Table 1. Commissioners also recommended as resources become available developing work programs that address:

- Dark skies
- Destination resort eligibility
- Environmental sustainability
- Overnight lodging vacation rentals
- Temporary uses of recreational vehicles
- Water resources
- Wireless telecommunication

Table 1 captures priority discretionary and nondiscretionary projects that are:

- Supported by the Board;
- Grant funded; or
- In process.

Table 1 – Priority Discretionary and Non-discretionary Projects

Priority Projects	
1. Current Planning ²	6. New Mule Deer Wildlife Inventory
2. Comprehensive Plan 2040 Update	7. SB 762, Wildfire Mitigation
3. Tumalo Community Plan Update (TGM Grant)	8. Transportation System Plan (TSP) Update
4. Sisters Country Trails (TGM Grant)	9. Historic Preservation (CLG Grant)
5. SB 391, Rural Accessory Dwelling Units	10. City of Bend Urban Growth Boundary (UGB), HB 4079, Affordable Housing Project

Table 2 identifies ongoing Planning Division operational responsibilities, regional coordination duties, and code maintenance tasks. These projects in their totality range from “minor” to “moderate”, requiring staffing resources that span 2 to 8 months to complete.

¹ Residents requested: 1) Amending Deschutes County Code to prevent the siting of future destination resorts; and 2) Updating regulations pertaining to temporary use of recreational vehicles as dwellings to better address occupancy, sewage, waste, fire hazards, and wetland impacts.

² Current Planning responsibilities are non-discretionary. Local land use decisions are subject to specific deadlines per state law. ORS 215.427.

Table 2 – Operational Responsibilities, Coordination Duties, and Code Maintenance

Category	Projects
Operational Responsibilities	<ol style="list-style-type: none"> 1. Destination Resort and Overnight Lodging Reporting 2. Marijuana inspections 3. Population estimates and forecasting 4. Staffing Historic Landmarks Commission (HLC), Bicycle and Pedestrian Advisory Committee (BPAC), and Mitigation and Advisory Committee (M&E) 5. Participate in 2023 Legislative Session 6. Support internal County departments (new landfill siting, etc.).
Coordination Duties	<ol style="list-style-type: none"> 7. City of Bend Coordination <ul style="list-style-type: none"> • Update and adopt the Bend Airport Master Plan (BAMP) and amend the County’s Comprehensive Plan and Development Code • Coordinate on growth management issues. 8. City of La Pine Coordination <ul style="list-style-type: none"> • Participate in updating County-owned New Neighborhood comprehensive plan designations, master plan, and zoning codes. 9. City of Redmond Coordination <ul style="list-style-type: none"> • Coordinate with City of Redmond and Central Oregon Intergovernmental Council (COIC) on CORE3, a multi-stakeholder regional emergency coordination center • Coordinate on growth management issues. 10. City of Sisters Coordination <ul style="list-style-type: none"> • Participate in the implementation of Sisters Country Vision Plan and City of Sisters Comprehensive Plan Update. • Coordinate on growth management issues. 11. Growth management committees, Bend Metropolitan Planning Organization (MPO), and Oregon Department of Transportation (ODOT) 12. Sage Grouse Coordination (proposed recently by the Board)
Code Maintenance	<ol style="list-style-type: none"> 13. Housekeeping Amendments

Table 3 lists discretionary zoning text amendments. These are “lower” priority projects, requiring staffing resources that span 4 to 12 months or longer to complete.

Table 3 – Low Priority Zoning Text Amendments

Category	Projects
Zoning Text Amendments	<ol style="list-style-type: none"> 1. Remove 10% reduction limit to property line adjustments in for farm and forest zoned properties 2. Outdoor Mass Gatherings to be addressed more thoroughly (HB 2790, 2019, allows counties to treat OMG as land use decisions) 3. Outdoor and Greenhouse Lighting Control Ordinance to comply with new technologies and Dark Skies best practices 4. Introduce re-platting requirements for major serial lot line adjustments in subdivisions 5. Sign code to become consistent with federal law by removing content limitations 6. Accessory structure amendments clarifying they must be built concurrent with or after the establishment of a primary residence. Specify allowed facilities (baths, cook tops, wet bar) in residential accessory structures (proposed by Deschutes County Current Planning Section and Code Compliance) 7. Section 6409(a) of the Spectrum Act (Wireless Telecommunication Amendments) 8. In conduit hydroelectric generation code amendments 9. Revisit Ham Radio Tower regulations to reflect building code updates and other issues 10. Amend Deschutes County Code to prevent the siting of future destination resorts (proposed by a Deschutes County resident) 11. Update regulations pertaining to temporary use of recreational vehicles as dwellings to better address occupancy, sewage, waste, fire hazards, and wetland impacts. (proposed by Deschutes County residents)

After thoughtful consideration, the Planning Commission felt it was important to endorse all of the projects listed in Table 1 without weighing one over another. They considered all of them noteworthy projects for the community. To the extent that resources become available, they recommended several projects that could lead to zoning text amendments pertaining to livability, economic development, and environmental sustainability. Beyond the Table 1 projects, the Planning Commission took special interest in projects relating to lighting/dark skies and destination resort remapping. The Planning Commission also emphasized interest in work plan projects that intersected with regional water issues, houselessness, wildfire, and wildlife.

The Board will ultimately prioritize projects based on their annual goals and objectives as planning resources become available.

IV. ADDITIONAL PUBLIC INPUT

The Planning Division received additional written comments prior to the Board's hearing (Attachment 2). It pertains to wireless telecommunication facilities in public right-of-way.

V. BOARD DELIBERATION & ADOPTION OF THE CDD 2022-2023 WORK PLAN

Following the public hearing, the Board may decide to:

1. Close the oral record, keep the written record open for one (1) or (2) weeks, and deliberate on Wednesday, June 1 (depending on the Board's schedule).
2. Close the oral and written records and deliberate at this meeting or at a subsequent meeting.
3. Continue the public hearing to a date certain.

ATTACHMENTS

1. Draft 2022-23 Work Plan
2. Additional Public Comments



COMMUNITY DEVELOPMENT

FY 2022-23 **DRAFT** Work Plan & 2021 Annual Report



117 NW Lafayette Avenue
P.O. Box 6005
Bend, OR 97703
www.deschutes.org/cd
(541) 388-6575

Building Safety
Code Compliance
Coordinated Services
Environmental Soils
Planning

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Introduction

Mission Statement

The Community Development Department (CDD) facilitates orderly growth and development in the Deschutes County community through coordinated programs of Building Safety, Code Compliance, Coordinated Services, Environmental Soils, Planning and education and service to the public.

Purpose

The 2021 Annual Report and 2022-23 Work Plan highlight the department’s accomplishments, goals and objectives and are developed to:

- Report on achievements and performance.
- Implement the Board of County Commissioners (BOCC) goals and objectives.
- Implement the Deschutes County Customer Service “Every Time” Standards.
- Effectively and efficiently manage organizational assets, capabilities and finances.
- Fulfill the department’s regulatory compliance requirements.
- Enhance the County as a safe, sustainable and highly desirable place to live, work, learn, recreate, visit and more; and
- Address changes in state law.

Adoption

The BOCC adopted this report on **May / June XX, 2022**, after considering public, stakeholder and partner organization input and Planning Commission and Historic Landmarks Commission recommendations. The Work Plan often includes more projects than there are resources available. CDD coordinates with the BOCC throughout the year to prioritize and initiate projects. Projects not initiated are often carried over to future years.

Pandemic Operations

CDD continues to provide services under the State’s health and safety framework following recommended safety measures to protect staff and customers while providing essential public services to support the Central Oregon economy.



Elected & Appointed Officials

BOARD OF COUNTY COMMISSIONERS

Patti Adair, Chair, January 2023
 Anthony DeBone, Vice Chair, January 2023
 Phil Chang, Commissioner, January 2025

COUNTY ADMINISTRATION

Nick Lelack, County Administrator
 Erik Kropp, Deputy County Administrator
 Whitney Hale, Deputy County Administrator

PLANNING COMMISSION

Jessica Kieras— Redmond Area (Chair), 6/30/26
 Susan Altman—Bend Area (Vice Chair), 6/30/24
 Steve Swisher—Sisters Area, 6/30/22
 Dale Crawford — At Large, 6/30/23
 Maggie Kirby—Bend Area, 6/30/23
 Toni Williams—South County Area, 6/30/25
 Nathan Hovekamp—At Large, 6/30/24

HISTORIC LANDMARKS COMMISSION

Kelly Madden— Unincorporated Area (Chair), 3/31/24
 Sharon Leighty— Unincorporated Area (Vice Chair), 3/31/26
 Dan Ellingson—Pioneer Association, 3/31/26
 Christine Horting-Jones—Ex-Officio, 3/31/24
 Dennis Schmidling— City of Sisters (Secretary), 3/31/24
 Rachel Stemach— Bend Area, 3/31/24

HEARINGS OFFICERS

Gregory J. Frank | Stephanie Hicks | Cable Huston LLP

BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE

Dave Thomson—At Large (Chair), 6/30/24
 Christopher Cassard—At Large (Vice Chair), 6/30/24
 Wendy Holzman—At Large 6/30/23
 Ann Marland—Sisters 6/30/23
 Scott Morgan—La Pine 6/30/23
 Kenneth Piarulli—Redmond 6/30/23
 David Roth—Bend 6/30/23
 Mark Smith—At Large 6/30/24
 Rachel Zakem—At Large 6/30/23
 Mason Lacy—At Large 6/30/23
 David Green—At Large 6/30/23
 Emily Boynton—At Large 6/30/24
 Neil Baunsgard—Bend 6/30/24

Board of County Commissioners

FY 2023 Goals & Objectives

Mission Statement: Enhancing the lives of citizens by delivering quality services in a cost-effective manner.

Safe Communities (SC): Protect the community through planning, preparedness, and delivery of coordinated services.

- Provide safe and secure communities through coordinated public safety and crisis management services.
- Reduce crime and recidivism and support victim restoration and well-being through equitable engagement, prevention, reparation of harm, intervention, supervision and enforcement.
- Collaborate with partners to prepare for and respond to emergencies, natural hazards and disasters.

Healthy People (HP): Enhance and protect the health and well-being of communities and their residents.

- Support and advance the health and safety of all Deschutes County's residents.
- Promote well-being through behavioral health and community support programs.
- Help to sustain natural resources and air and water quality in balance with other community needs.
- Continue to support pandemic response and community recovery, examining lessons learned to ensure we are prepared for future events.

A Resilient County (RC): Promote policies and actions that sustain and stimulate economic resilience and a strong regional workforce.

- Update County land use plans and policies to promote livability, economic opportunity, disaster preparedness, and a healthy environment.
- Maintain a safe, efficient and economically sustainable transportation system.
- Manage County assets and enhance partnerships that grow and sustain businesses, tourism, and recreation.

Housing Stability and Supply (HS): Support actions to increase housing production and achieve stability.

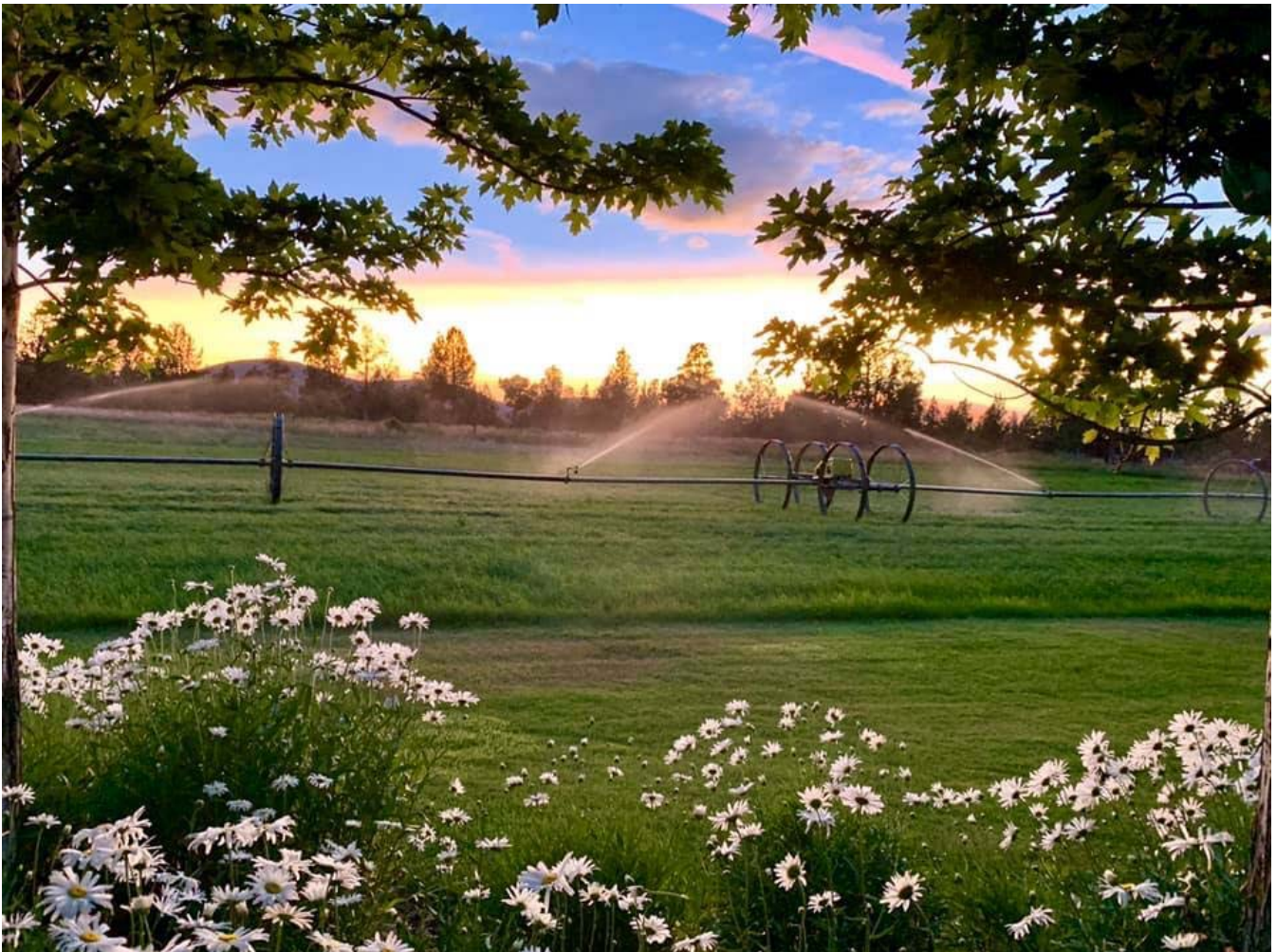
- Expand opportunities for residential development on County-owned properties.
- Support actions to increase housing supply.
- Collaborate with partner organizations to provide an adequate supply of short-term and permanent housing and services to address housing insecurity.

Board of County Commissioners

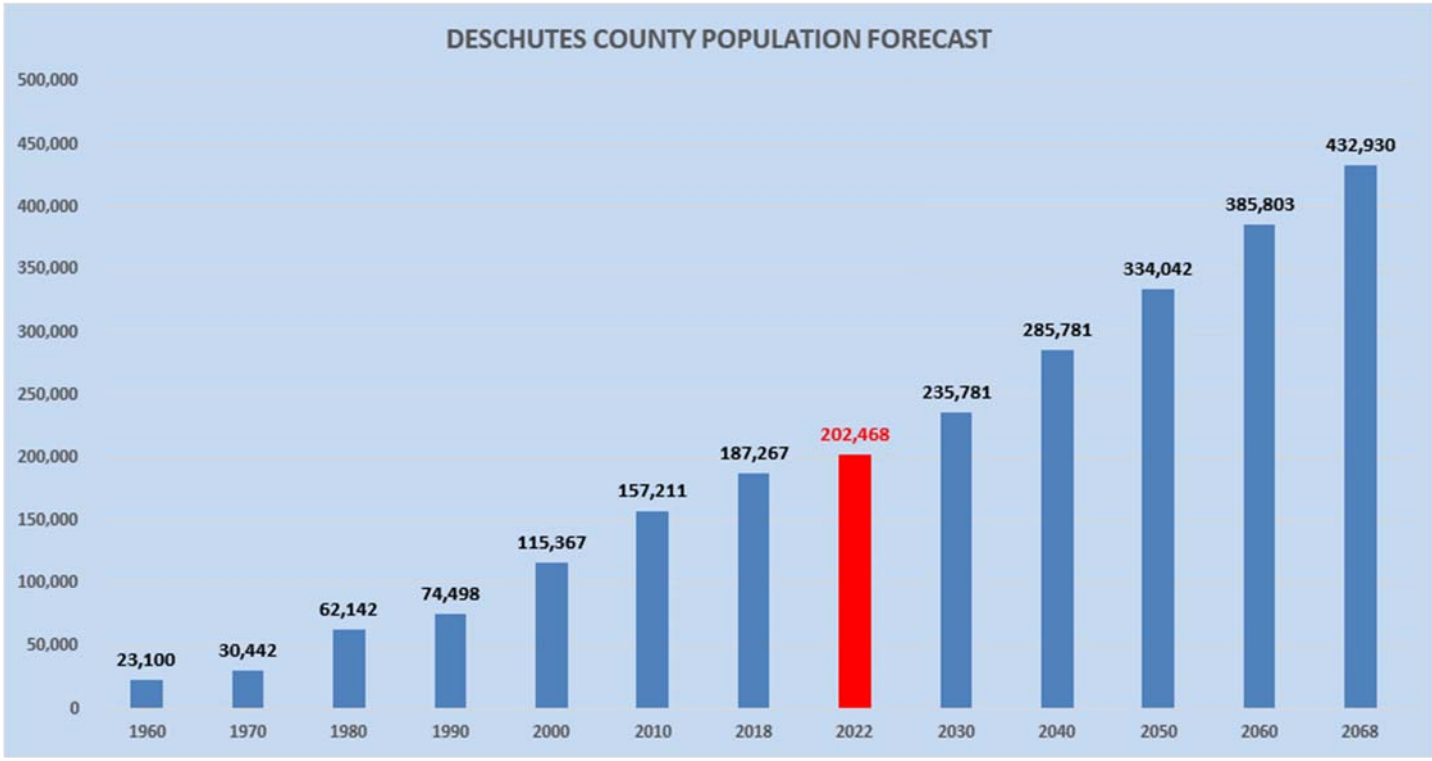
FY 2022 & 2023 Goals & Objectives, Continued

Service Delivery (SD): Provide solution-oriented service that is cost-effective and efficient.

- Ensure quality service delivery through the use of innovative technology and systems.
- Support and promote Deschutes County Customer Service “Every Time” standards.
- Continue to enhance community participation and proactively welcome residents to engage with County programs, services and policy deliberations.
- Preserve, expand and enhance capital assets, to ensure sufficient space for operational needs.
- Maintain strong fiscal practices to support short and long-term county needs.
- Provide collaborative internal support for County operations with a focus on recruitment and retention initiatives.



Population Growth



This graph provides a snapshot of the County’s growth since 1960 and the preliminary 50-year Portland State University, Oregon Population Forecast Program, through 2068.

HISTORICAL AND PORTLAND STATE UNIVERSITY FORECAST TRENDS

Geographic Area	2000	2010	*AAGR 2022-2043	2022	2043	2068
Deschutes County	116,277	157,905	1.9%	202,468	301,999	432,930
Bend	52,163	77,010	2.3%	100,176	162,362	255,291
Redmond	15,524	26,508	2.3%	32,138	51,617	82,575
Sisters	961	2,038	2.6%	2,987	5,169	8,431
La Pine	899	1,653	2.7%	2,041	3,954	5,894
Unincorporated	45,280	50,524	1.0%	64,798	79,248	80,739

*AAGR: Average Annual Growth Rate

Budget & Organization

Fiscal Issues

- Ensure financial stability and sustained high quality services through establishing a financial contingency plan providing a clear course of action if CDD's reserve funds decline.
- CDD is responding to significantly increased inquiries regarding rural development opportunities. Many of these inquiries require research and in-depth responses, but do not result in permits and corresponding revenue. This "non-fee generating" work, a public good, is consuming limited resources to efficiently process a variety of permits.
- Significant staff turnover is creating additional costs to and resource re-allocations from service delivery to training in the department.

Operational Challenges

- Maintaining productivity while experiencing near record high levels of permitting volumes and significant staff turnover. During 2021, CDD welcomed 14 new staff, internally promoted 11 staff and ended the year with 10 positions in various stages of the recruitment process. An estimated 63% of CDD staff have 5 years or less experience with the department.
- Coordinating with Human Resources to develop and implement strategies to retain and recruit staff.
- Succession planning for upcoming staff retirements. An estimated 11% of current staff will be eligible for retirement within the next 6 to 8 years based on length of service.
- Transitioning to and implementing post-pandemic business operations such as continued partial remote working, shared work spaces with increasing staff levels, adherence to ongoing public health and safety measures and continued expansion of CDD online services and meeting technologies.
- Improving post-pandemic public hearing and engagement strategies with in-person and remote/online participation opportunities.
- Implementing new laws from the 2022 Legislative Session.
- Processing complex and controversial code compliance cases.
- Addressing affordable housing through collaboration with cities, the County's Property Manager, and exploring rural strategies.
- Continuing improvement of the department's website and other electronic internal and external services to improve efficiencies and service delivery.

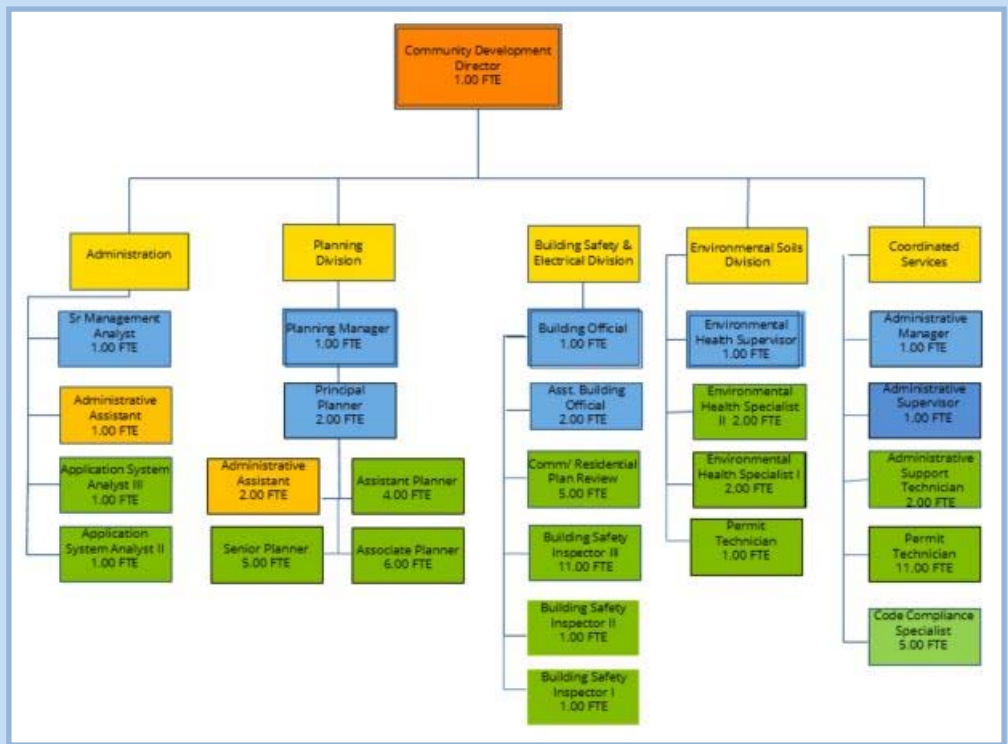


Budget & Organization

Budget Summary

	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Resources	\$10,657,457	\$10,550,824	\$9,457,684	\$11,302,683	\$13,912,023
Requirements	\$10,657,457	\$10,550,824	\$9,457,684	\$11,302,683	\$13,912,023

Organizational Chart



Staff Summary

	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Total FTE's	55.00	58.00	65.00	69.00	72.00

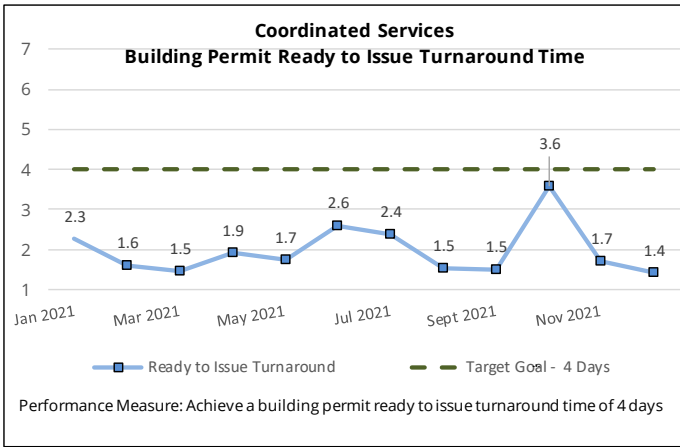
Performance Management

CDD is committed to a comprehensive approach to managing performance. The department achieves its goals and objectives by strategically establishing and monitoring performance measures and by adjusting operations based on those results. The performance measures allow staff to:

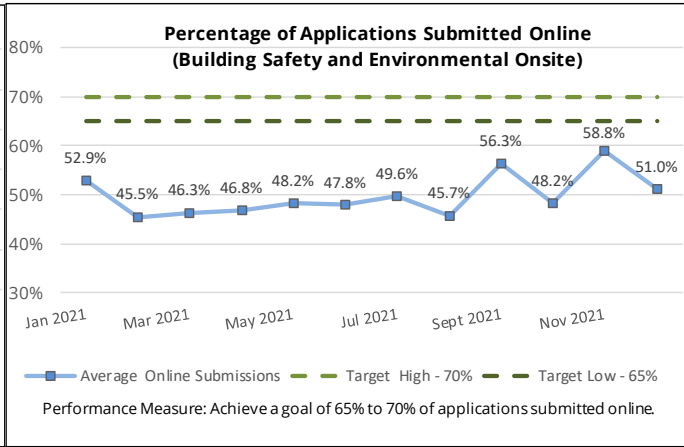
- Address service delivery expectations from the perspectives of CDD’s customers.
- Ensure the department fulfills its regulatory compliance requirements.
- Efficiently and effectively manage the organization’s assets, capacities and finances; and
- Preserve and enhance the County as a safe, sustainable and desirable place to live, visit, work, learn and recreate.

The following graphs represent a sample of CDD’s performance measures for 2021. For a complete review of performance measures, please follow this link: <https://deschutes.org/cd/>.

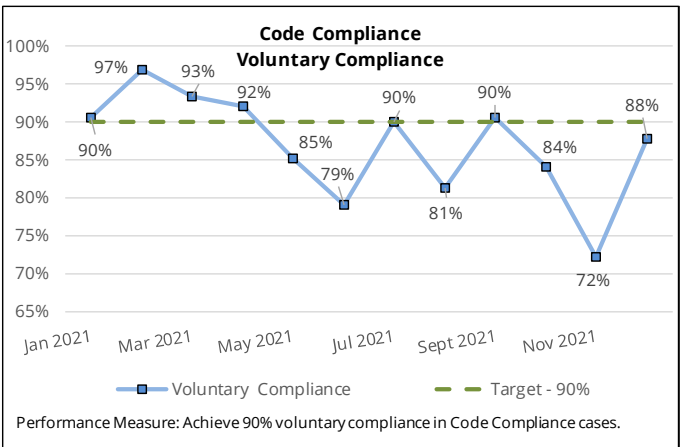
2021 Performance Management Results



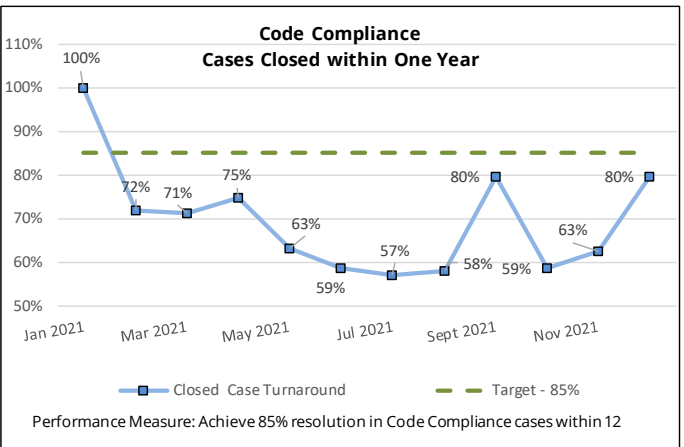
Annual Average of 1.9 Days - Target Achieved



Annual Average of 49.5% Submitted Online- Target Not Achieved



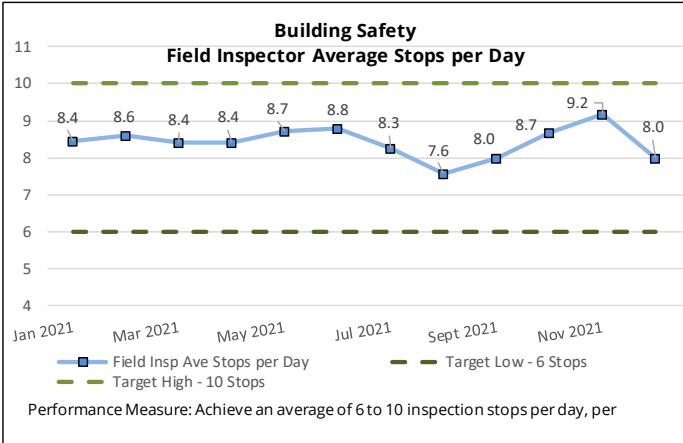
Annual Average of 88% Compliance - Target Within Range



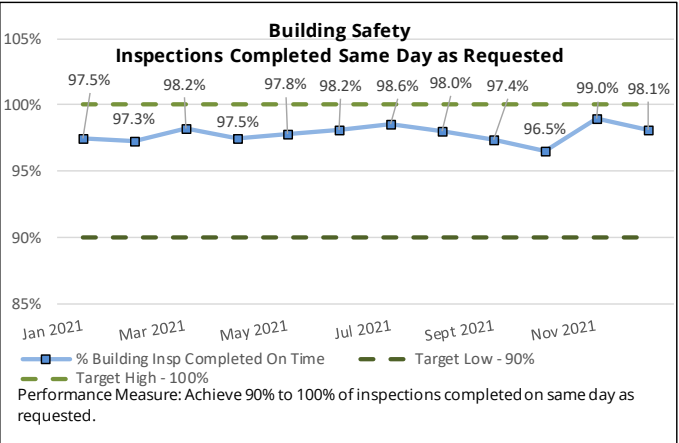
Annual Average of 69% Closed within 1 Year- Target Not Achieved

Performance Management

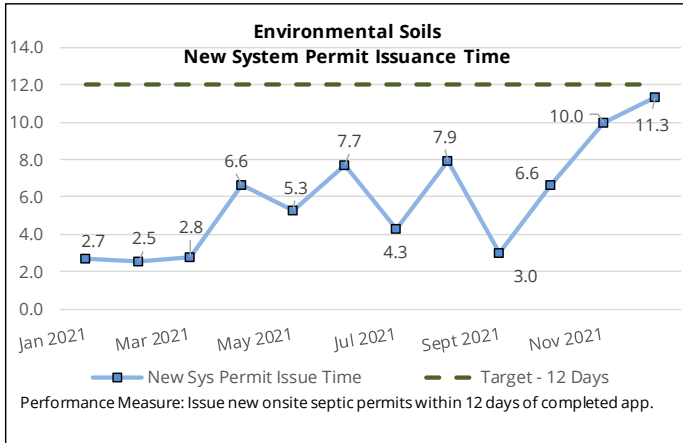
2021 Performance Management Results, continued



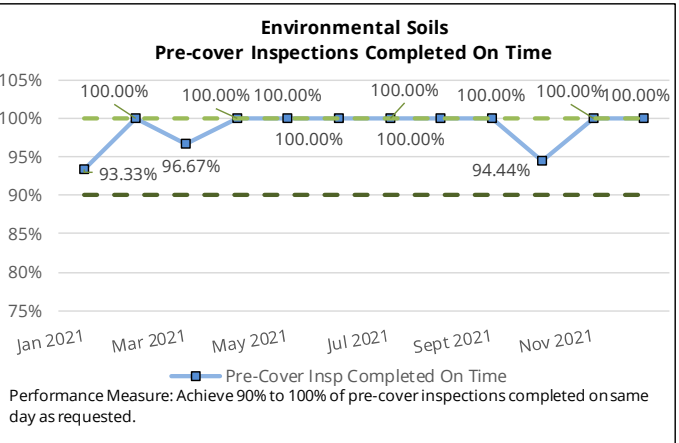
Annual Average of 8.4 per Day - Target Achieved



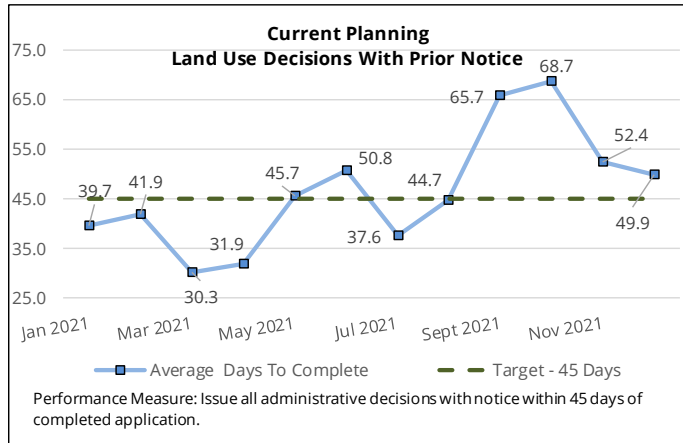
Annual Average of 97.8% Completed - Target Achieved



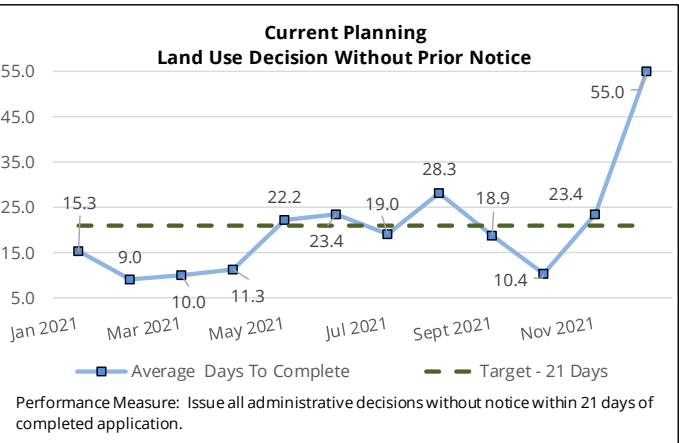
Annual Average of 5.8 Days - Target Achieved



Annual Average of 98.6% Completed - Target Achieved



Annual Average of 45.1 Days - Target Achieved



Annual Average of 19.9 Days - Target Achieved

Performance Management

2021 Year in Review

- Continued to provide essential services to the public while implementing pandemic related safety measures, such as socially distanced interactions, remote work and inspectors dispatched from home.
- Revised office lobby hours, closing to the public at 4:00 p.m. to provide staff opportunity to respond to an increased number of calls, email inquiries and online application submissions.
- Coordinated with State and County staff to promote and educate customers on how to apply for online permits and inspections.
- Implemented use of standardized templates for administrative determinations.

2022-2023 Performance Measures By Division

CDD’s 2022-23 performance measures align the department’s operations and work plan with BOCC annual goals and objectives and the County’s Customer Service “Every Time” Standards. <https://intranet.deschutes.org/Pages/Customer-Service-Standards.aspx>

Building Safety

- Achieve 6-10 inspection stops per day to provide quality service. (BOCC Goal & Objective SD-1)
- Achieve an average turnaround time on building plan reviews of 8-10 days to meet or exceed state requirements. (BOCC Goal & Objective SD-1)
- Achieve 50-80% of inspections scheduled online. (BOCC Goal & Objective SD-1)
- Achieve 90-100% of inspections completed the same day as requested. (BOCC Goal & Objective SD-1)
- Provide community training opportunities for online application submission to obtain a goal of 60% of application submittals conducted online. (BOCC Goal & Objective SD-1)

Code Compliance

- Achieve 90% voluntary compliance in Code Compliance cases. (BOCC Goal & Objective SC-1)
- Achieve 85% resolution of Code Compliance cases within 12 months. (BOCC Goal & Objective SC-1)

Coordinated Services

- Expand community training opportunities for online application submission to obtain a goal of 50-60% of application submittals conducted online. (BOCC Goal & Objective SD-1)
- Achieve structural permit ready-to-issue turnaround time for Coordinated Services of 4 days. (BOCC Goal & Objective SD-1)



Performance Management

Environmental Soils

- Achieve compliance with the Alternative Treatment Technology (ATT) Septic System Operation and Maintenance (O&M) reporting requirements of 95% to protect groundwater. (BOCC Goal & Objective HP-3)
- Achieve the issuance of onsite septic system permits within 12 days of completed application. (BOCC Goal & Objective SD-1)
- Achieve 50% of inspections scheduled online. (BOCC Goal & Objective SD-1)
- Achieve 90-100% of Pre-cover inspections completed the same day as requested. (BOCC Goal & Objective SD-1)

Planning

- Sustain the issuance of land use administrative decisions with notice within 45 days and without notice within 21 days of completed application. (BOCC Goal & Objective SD-1)
- City of Bend Coordination:
 - Amend the City of Bend Urban Growth Boundary and County zoning to implement HB 4079, Affordable Housing Project. (BOCC Goal & Objectives RC-1 and HP-1)
- Housing Strategies:
 - Amend County Code to implement SB 391, Rural Accessory Dwelling Units (ADU). (BOCC Goal & Objectives RC-1 and HP-1)
- Natural Resources:
 - Natural Hazards— Develop a work plan to amend the Comprehensive Plan and County Code requiring defensible space and fire-resistant building materials per SB 762—Wildfire Mitigation. (BOCC Goal & Objectives SC-3, HP-3, and RC-1)
 - Wildlife Inventories—Amend Comprehensive Plan and Zoning Code to incorporate a new mule deer winter range inventory from Oregon Department of Fish and Wildlife (ODFW). (BOCC Goal & Objectives HP-3)



Administrative Services

Overview

Administrative Services consists of the Community Development Director, Senior Management Analyst, two Systems Analysts and one Administrative Assistant. The Administrative Services Division provides oversight for all departmental operations and facilities, human resources, budget, customer services, technology and performance measures. Analyst staff are responsible for the integration of technology across all CDD divisions, coordination with the cities as well as providing direct service to the public via application training and support, web-based mapping, reporting services and data distribution.

2021 Year in Review

- ✓ Welcomed a new CDD Director in the fall of 2021.
- ✓ Revised office lobby hours, closing to the public at 4:00 p.m. to provide staff opportunity to respond to an increased number of calls, email inquires and online application submissions.
- ✓ Continued remote work options for approximately 75% of staff.
- ✓ Revised CDD's Fee Waiver Policy with BOCC approval.
- ✓ Enhanced CDD's Planning Division's webpage to provide more information about land use public hearings, application materials and opportunities for the public to submit comments on pending applications.
- ✓ Began a reorganization of office spaces and small remodel on CDD's first floor in an effort to better utilize available square footage.



Administrative Services

2022-23 Work Plan Projects

- Reconfigure Accela to improve code compliance case management and planning land use module interoperability.
- Continue to participate in a County-led effort to create a county-wide Pre-disaster Preparedness Plan.
- Update Continuity Of Operation Plan (COOP), as necessary, based on lessons learned during the pandemic.
- Coordinate with the Human Resources Department to evaluate, propose and implement strategies to attract and retain staff to meet increasing service demands in a highly competitive market.
- Explore and research opportunities to increase CDD’s sustainable business practices while maximizing the efficiency of operations in a cost effective manner.
- Reorganize and enhance CDD’s website to be more customer-centric. Provide enhanced content that will allow customers to better understand CDD’s policies and procedures and create an improved customer experience that acts as a guide for understanding the process of development in Deschutes County while also expanding online application instruction content.
- Government software integration—Improve system interoperability of Accela and DIAL software systems, increasing efficiency and improved service through implementation of a software connector which will allow “real time” document upload.
- Complete analysis of installation of electric vehicle charging stations and purchase of electric vehicles to ensure quality service delivery through the use of innovative technology and systems.
- Implement a new employee onboarding process to acclimate new employees to their role and an exit interview process for departing staff to learn where department improvements can be made and make sure the employee feels satisfied about their service.
- Implement process to invoice non-residential transportation system development charges and send annual notice of amount due and potential rate increases.

Staff Directory

Peter Gutowsky	Community Development Director	(541) 385-1709	Peter.Gutowsky@deschutes.org
Tim Berg	Applications System Analyst III	(541) 330-4648	Tim.Berg@deschutes.org
Ines Curland	Applications System Analyst II	(541) 317-3193	Ines.Curland@deschutes.org
Tracy Griffin	Administrative Assistant	(541) 388-6573	Tracy.Griffin@deschutes.org
Sherri Pinner	Senior Management Analyst	(541) 385-1712	Sherri.Pinner@deschutes.org

Building Safety

Overview

Building Safety consists of one Building Official, one Assistant Building Official and eighteen Building Safety Inspectors. The Building Safety Division administers and implements the state and federal building codes through a process of education and a clear and consistent application of the specialty codes. The division provides construction plan reviews, consultation and inspection services throughout the rural county and the cities of La Pine and Sisters. The division also provides services to Lake, Jefferson, Klamath and Crook counties, the cities of Bend and Redmond, and the State of Oregon Building Codes Division on an as-needed basis.

2021 Year in Review

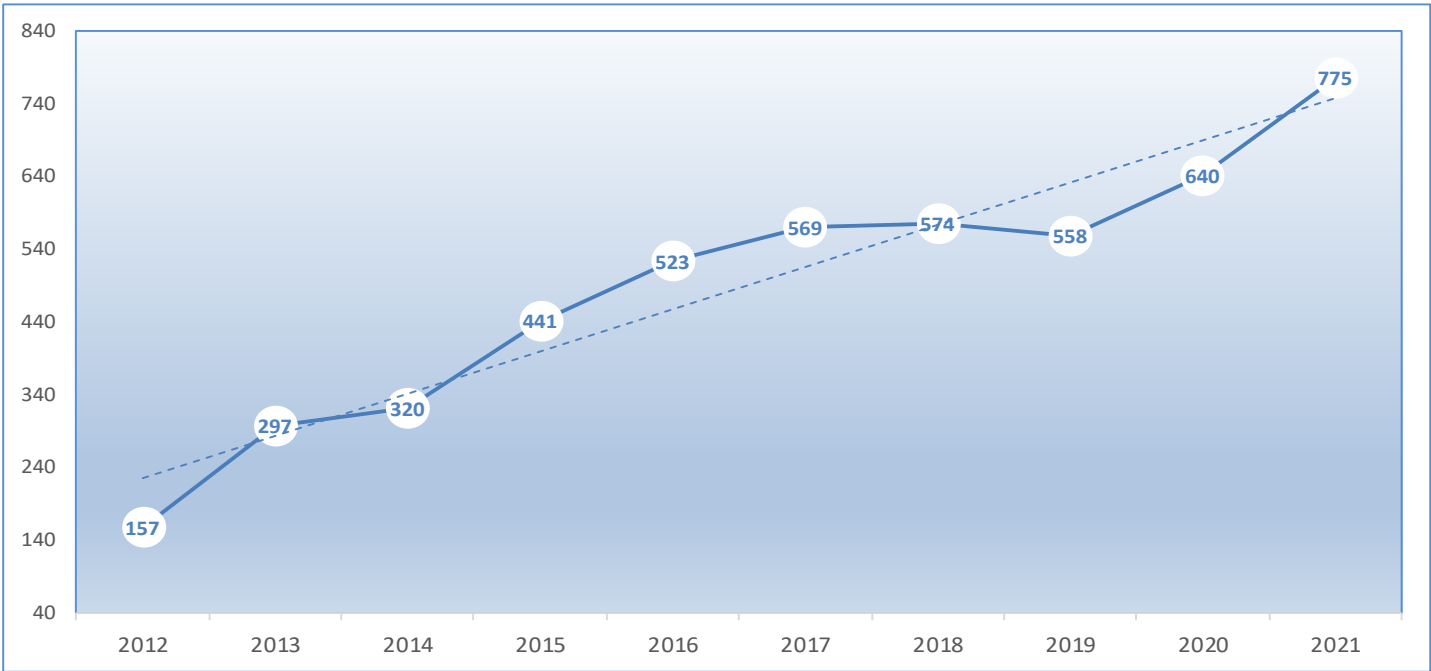
- ✓ Issued 775 new single-family dwelling permits in 2021. The distribution of these new homes for Deschutes County's building jurisdiction included:
 - Rural/unincorporated areas: 541
 - City of La Pine: 120
 - City of Sisters: 114
- ✓ Completed major building plan reviews for:
 - Wetlands Taphouse in La Pine
 - Preble Way Mobile Home Park in La Pine
 - Sisters Coffee New Production Facility
 - McKenzie Meadows Village in Sisters
 - Oxbow Flats in Sisters
 - Replacement Crematorium at Deschutes Memorial Garden
 - Black Butte Ranch Lodge Dining Facility
- ✓ Obtained BOCC approval revising the process to legitimize undocumented residential structures (Resolution 2021-069).
- ✓ Facilitated the successful transition of field inspection staff to dispatch from home during a record breaking building season.
- ✓ Participated in SB 391—Rural ADU, legislative discussions.
- ✓ Coordinated local discussions regarding most recent building code updates.
- ✓ Participated in public, community and customer-specific education and outreach efforts such as Oregon Administrative Rule (OAR) 918-480-0125 Uniform Alternate Construction Standards for mitigation due to a lack of firefighting water supplies.
- ✓ Coordinated with State and County staff to promote and educate customers on how to apply for online permits and inspections.
- ✓ Continued succession planning, cross-training and technology investments to maintain and improve efficiencies.
- ✓ Continued to serve in regional and statewide leadership positions to support Deschutes County and Central Oregon interests.
- ✓ Transitioned staff to remote work locations while maintaining productivity and improving operational efficiencies.

Building Safety

2021 Year in Review, continued

- ✓ Actively participated in discussions relating to:
 - SB 762, Wildfire Mitigation, and forthcoming requirements to apply ORSC 327.4 to new development.
 - Newly created requirements for daycare and adult foster care facilities located in private residential homes.
 - Local contractors in regards to the new American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) ventilation requirements.
- ✓ Provided A-level electrical inspection services, electrical plan review and customer contact support for commercial and residential electrical questions for Jefferson County.

New Single Family Dwelling Permits



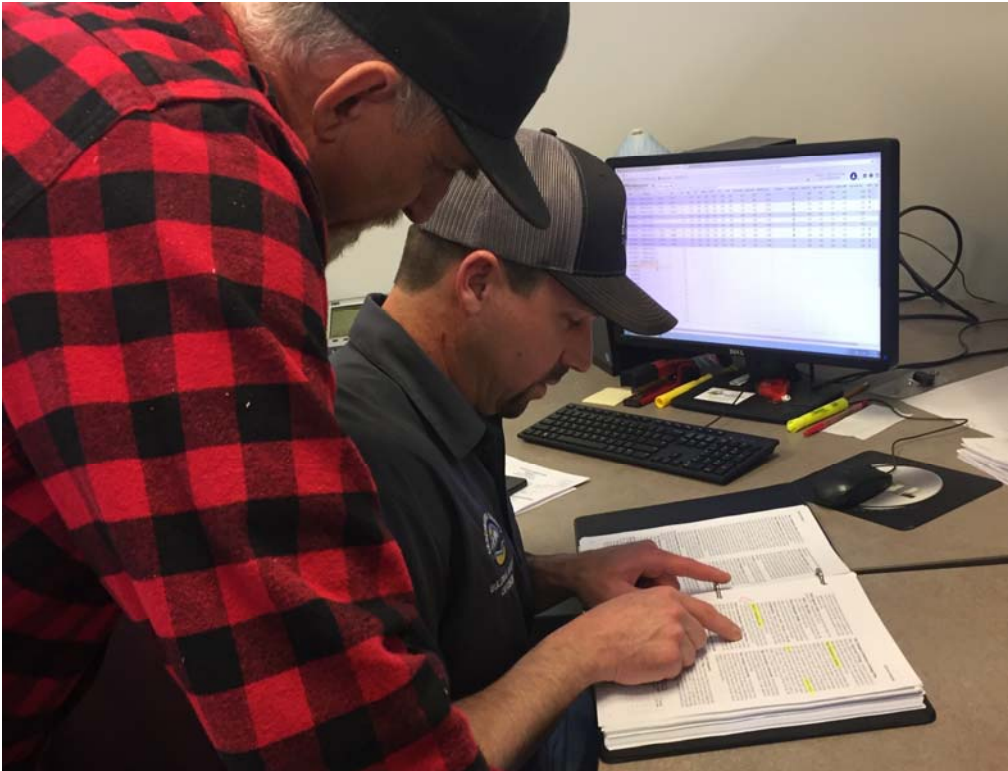
Building Safety

2022-23 Work Plan Projects

- Implement succession planning for future retirements and explore staffing needs due to unprecedented business needs and remote work options.
- Provide certification cross-training for all new hires to maintain the division's goal of having fully certified residential inspection staff.
- Explore options to reduce the carbon footprint associated with field inspection duties such as:
 - Alternative fuel options and All-Wheel Drive electric vehicles.
 - Charging stations for electric vehicles (one station per 2 vehicles).
- Work with Oregon e-Permitting to help test the new app for inspections prior to the roll out.
- Implement the use of drones and other technologies to accomplish high risk inspections such as:
 - Roof diaphragm nailing
 - Chimney Construction
 - PV Solar Installations
 - High lift concrete masonry unit (CMU) grouting
- Continue participation in SB 762, Wildfire Mitigation and the forthcoming process of implementing additional construction standards to reduce hazards presented by wildfire (Oregon Residential Specialty Code (ORSC) R327.4), and/or defensible space requirements into Deschutes County Code.
- Participate in SB 391 discussions regarding Rural ADUs in Deschutes County.
- Produce new informational brochures as required by OAR 918-020-0090 to help customers navigate code changes such as Energy Code and Daycare Facility updates.
- Host Chemeketa Community College Building Inspection Technology students for summer Cooperative Work Experience program which provides an opportunity to demonstrate the county's customer friendly, service-oriented approach as a regulatory agency.
- Coordinate with the Human Resources Department to evaluate, propose and implement strategies to attract and retain staff to meet increasing service demands in a highly competitive market.



Building Safety



Staff Directory

Randy Scheid	Building Safety Director	(541) 317-3137	Randy.Scheid@deschutes.org
Chris Gracia	Assistant Building Official	(541) 388-6578	Chris.Gracia@deschutes.org
Krista Appleby	Building Inspector III	(541) 385-1701	Krista.Appleby@deschutes.org
Keri Blackburn	Building Inspector III	(541) 388-6577	Keri.Blackburn@deschutes.org
Mark Byrd	Building Inspector III	(541) 749-7909	Mark.Byrd@deschutes.org
Rainer Doerge	Building Inspector III	(541) 480-8935	Rainer.Doerge@deschutes.org
Ami Dougherty	Building Inspector I	(541) 385-3217	Ami.Dougherty@deschutes.org
Scott Farm	Building Inspector III	(541) 480-8937	Scott.Farm@deschutes.org
David Farrin	Building Inspector III	(541) 385-1702	David.Farrin@deschutes.org
Anthony Friesen	Building Inspector III	(541) 213-0653	Anthony.Friesen@deschutes.org
Owen Gilstrap	Building Inspector III	(541) 480-8948	Owen.Gilstrap@deschutes.org
Erik Johnson	Building Inspector III	(541) 480-8940	Erik.A.Johnson@deschutes.org
Brandon Jolley	Building Inspector III	(541) 797-3581	Brandon.Jolley@deschutes.org
John Kelley	Building Inspector III	(541) 797-3582	John.Kelley@deschutes.org
Michael Liskh	Building Inspector III	(541) 280-0342	Michael.Liskh@deschutes.org
Brian Moore	Building Inspector III	(541) 385-1705	Brian.Moore@deschutes.org
Aaron Susee	Building Inspector II	(541) 749-7370	Aaron.Susee@deschutes.org
Laurie Wilson	Building Inspector III	(541) 383-6711	Laurie.Wilson@deschutes.org

Code Compliance

Overview

Code Compliance consists of five Code Compliance Specialists. The program is managed by the Coordinated Services Administrative Manager and is supported by a law enforcement deputy from the Sheriff's Office and CDD's operating divisions. The Code Compliance Division is responsible for investigating code violation complaints to ensure compliance with land use, onsite wastewater disposal, building and solid waste codes (by contract with the Solid Waste Department), and provides direct service on contract to the City of La Pine for solid waste violations. The program's overriding goal is to achieve voluntary compliance. If necessary, cases are resolved through Circuit Court, Justice Court or before a Code Compliance Hearings Officer proceeding. The program continues to adapt to the County's challenges of growth and diversification, incorporating new measures to ensure timely code compliance.

While voluntary compliance is the primary objective, an ever-growing number of cases require further code compliance action because of delayed correction or non-compliance. Through the refinement of departmental procedures for administrative civil penalty, Code Compliance is obtaining compliance from citations rather than court adjudication, resulting in greater cost recovery. A disconcerting trend is the need for County abatement in some cases. In abatement, the County corrects the violations. Abatement action is reserved for matters of chronic nuisance and public health and safety. In response to this trend, Code Compliance is closely coordinating with other County departments in the development and enactment of abatement plans.

2021 Year in Review

- ✓ During 2021, 788 new cases were received and 742 cases were resolved. This is a 10% decrease in new cases from the previous year.
- ✓ Implemented the Noxious Weed Program.
- ✓ Revised the Code Compliance Policy and Procedures Manual with direction from the BOCC.
- ✓ Continued to partner with County departments to resolve difficult cases. Coordination ensures efficient operations and avoids overlapping efforts, thus allowing staff to conduct a thorough investigation on behalf of community members.
- ✓ Provided staff with field safety classes in coordination with Deschutes County Sheriff's Office.
- ✓ Created an internal volunteer program to assist with clean up of properties in violation of Solid Waste codes.

2022-23 Work Plan Projects

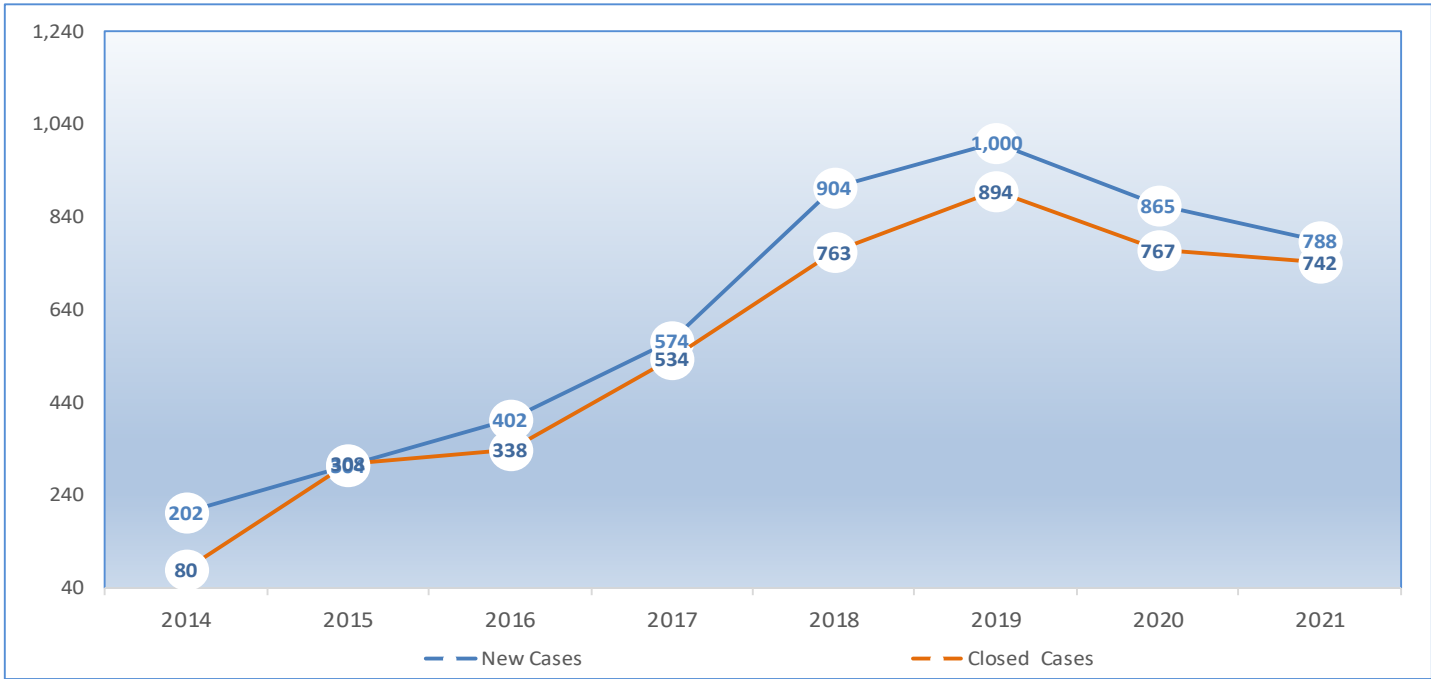
- Analyze the compliance program in an effort to create efficiencies in how cases are assigned, managed and proceed through the compliance process.
- Enhance involvement in Oregon Code Enforcement Association (OCEA) next annual conference through presentation participation.
- Continue to improve training program for new hires to include training efficiencies.
- Update and revise the Standard Operating Procedures manual as processes change.

Code Compliance

2022-23 Work Plan Projects, continued

- Automate the process for medical hardship notification and out-of-compliance O&M contracts performed by administrative staff.
- Revise CDD’s Voluntary Compliance Agreement and updating templates for Pre-Enforcement Notices to ensure clear communication.
- Explore ideas to ensure staff safety such as radio communication and purchase of safety tools.
- Coordinate with the Human Resources Department to evaluate, propose and implement strategies to attract and retain staff to meet increasing service demands in a highly competitive market.

Annual Cases Opened and Closed



Code Compliance

Internal Volunteer Program



Staff Directory

Scott Durr	Code Compliance Specialist	(541) 385-1745	Scott.Durr@deschutes.org
Carolyn Francis	Code Compliance Specialist	(541) 617-4736	Carolyn.Francis@deschutes.org
John Griley	Code Compliance Specialist	(541) 617-4708	John.Griley@deschutes.org
Dan Smith	Code Compliance Specialist	(541) 385-1710	Daniel.Smith@deschutes.org
Jeff Williams	Code Compliance Specialist	(541) 385-1745	Jeff.Williams@deschutes.org

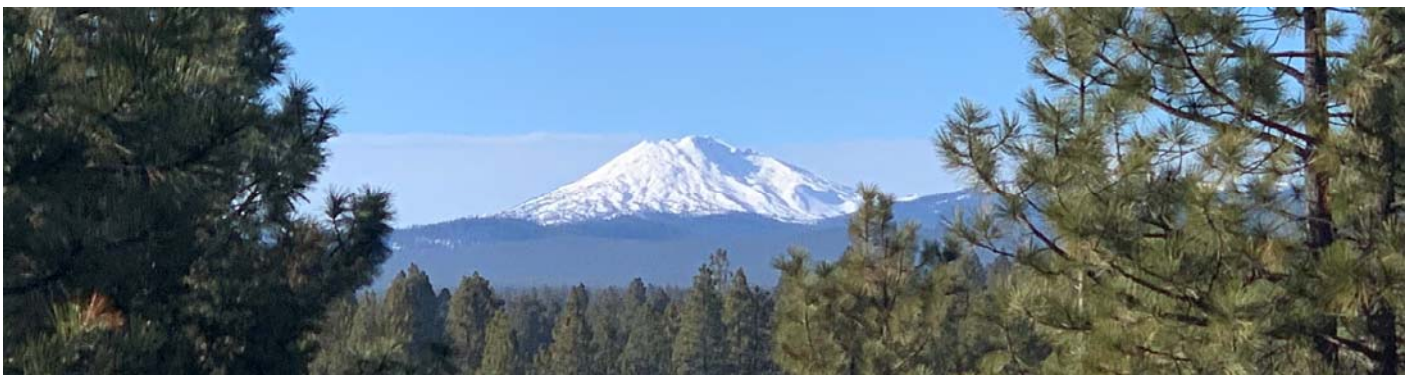
Coordinated Services

Overview

Coordinated Services consists of an Administrative Manager, one Administrative Supervisor, eleven Permit Technicians and two Administrative Support Technicians. The Coordinated Services Division provides permitting and “front line” direct services to customers at the main office in Bend as well as in the La Pine and Sisters city halls. While coordinating with all operating divisions, staff ensure accurate information is provided to the public, while minimizing wait times and ensuring the efficient operation of the front counter and online portal.

2021 Year in Review

- ✓ The Administrative Supervisor position created during the FY 22 budget process was through an internal recruitment.
- ✓ Permit Technicians continued to provide exceptional customer service during the pandemic.
- ✓ Continued to refine a more efficient staff training process.
- ✓ Continued updating the manual of Standard Operating Procedures as an additional resource for staff consistency and succession planning.
- ✓ Revised role of Administrative Support staff to include assistance with record maintenance and assistance to other operating divisions.
- ✓ Increased electronic permit submittals through public education and outreach to licensed professionals. During 2021, CDD received 49.4% of applications online in comparison to 39.7% in 2020.
- ✓ Transitioned submittal of commercial plans to online acceptance.
- ✓ As Accela continued to evolve and new tools became available, Deschutes County continued to be a statewide leader in offering training opportunities to customers and regional agency partners. Coordinated Services continued to hosted in-house and one-on-one training opportunities.
- ✓ Reopened satellite office locations in City of Sisters and City of La Pine.
- ✓ Implemented First Interstate Bank remote deposit feature in main office and satellite locations.
- ✓ Completed process to electronically scan building plans to property development records.
- ✓ The Oregon Building Officials Association awarded Jennifer Lawrence the Permit Technician of the Year award for exemplifying the best of the best in Oregon’s city and county building departments.



Coordinated Services

2022-23 Work Plan Projects

- Update and revise the Standard Operating Procedures manual as processes change.
- Continue to improve training program for new hires to include training efficiencies.
- Revise lead permit technician role.
- Transition submittals of residential plans to online acceptance.
- Coordinate with the Human Resources Department to evaluate, propose and implement strategies to attract and retain staff to meet increasing service demands in a highly competitive market.

Office Locations & Lobby Hours

Main Office—117 NW Lafayette Ave, Bend, OR 97703

Monday, Tuesday, Thursday, Friday 8:00 AM—4:00 PM, Wednesday 9:00 AM—4:00 PM

La Pine City Hall—16345 Sixth St., La Pine, OR 97739

Thursday 9:00 AM—4:00 PM

Sisters City Hall—520 E. Cascade St., Sisters, OR 97759

Tuesday 9:00 AM—4:00 PM

Staff Directory

Angie Havnear	Administrative Manager	(541) 317-3122	Angela.Havnear@deschutes.org
Jennifer Lawrence	Administrative Supervisor	(541) 385-1405	Jennifer.L.Lawrence@deschutes.org
Tara Alvarez	Permit Technician	(541) 383-4392	Tara.Campbell-Alvarez@deschutes.org
Katie Borden	Permit Technician	(541) 385-1741	Katie.Borden@deschutes.org
Mikaela Costigan	Permit Technician	(541) 385-1714	Mikaela.Costigan@deschutes.org
Ian Cullen	Permit Technician	(541) 388-6680	Ian.Cullen@deschutes.org
Taylor Eagan	Permit Technician	(541) 388-6562	Taylor.Eagan@deschutes.org
Robert Graham	Administrative Support	(541) 385-3217	Robert.Graham@deschutes.org
Miu Green	Permit Technician	(541) 385-3200	Miu.Green@deschutes.org
Terese Jarvis	Permit Technician	(541) 383-4435	Terese.Jarvis@deschutes.org
Jean Miller	Administrative Support	(541) 383-6711	Jean.Miller@deschutes.org
Jessie Waugh	Permit Technician	(541) 385-1730	Jessica.Waugh@deschutes.org

Environmental Soils

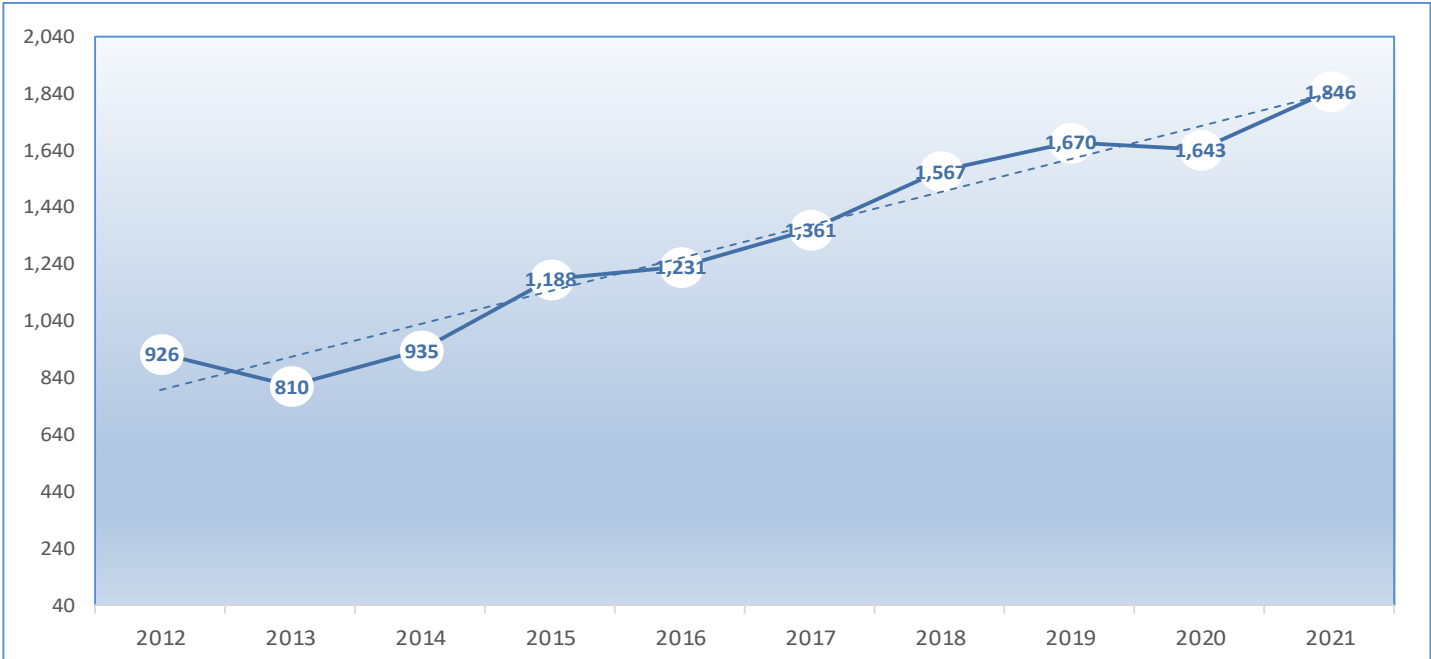
Overview

Environmental Soils consists of one Environmental Health Supervisor, two Environmental Health Specialists II, two Environmental Health Specialist I and one Permit Technician. The Environmental Soils Division regulates on-site wastewater treatment systems (septic) to assure compliance with state rules, and monitors environmental factors for public health and resource protection. They provide site evaluations, design reviews, permitting, inspections and education and coordination with the Oregon Department of Environmental Quality (DEQ) for onsite wastewater treatment and dispersal systems. Staff inspects sewage pumper trucks, reports on the condition of existing wastewater systems, maintains an O&M tracking system, provides the public with information on wastewater treatment systems and regulations and investigates sewage hazards to protect public health and the environment. Staff are also engaged in the proactive pursuit of protecting the groundwater in Deschutes County and continue to work with DEQ on permitting protective onsite wastewater systems in Southern Deschutes County.

2021 Year in Review

- ✓ Assessed 382 sites for onsite wastewater treatment and dispersal systems, an increase of 29.1% from 2020, and issued 1,846 permits and authorizations for new and existing onsite treatment and dispersal systems, an increase of 12% from 2020. Assessed sites included several new subdivisions. Applications continue to increase in complexity and technical requirements.
- ✓ Repaired 290 failing or substandard systems correcting sewage health hazards and protecting public health and the environment.
- ✓ Increased electronic permit submittal and inspection scheduling through outreach and education of customers, particularly licensed professionals. During 2021, the division received 43.2% of applications online compared to 43.6% in 2020.

Onsite Permits Issued



Environmental Soils

2021 Year in Review, continued

- ✓ Provided ten property owners in South County with rebates of \$3,750 per property for upgrading conventional onsite wastewater treatment systems to nitrogen-reducing pollution reduction systems.
- ✓ Provided assistance and information regarding onsite wastewater treatment systems in Terrebonne to Parametrix, engineering consultant, for the Terrebonne Sewer Feasibility Study.
- ✓ Coordinated with the City of Bend and DEQ staff regarding the septic to sewer program, and the impact on homeowners with onsite wastewater systems.
- ✓ Worked with DEQ on permitting protective onsite wastewater systems in South Deschutes County. Participated in dozens of variance hearings for modified advanced treatment systems on severely limited sites.
- ✓ Adapted to COVID-19 limitations by remote working, electronic permitting, computer technologies, electronic communications and deploying staff from home. Staff was able to sustain performance measures, permit and inspection turnaround times and maintain high service levels demonstrating resilience, team work and professionalism to continue to serve the community.
- ✓ Hired two new Environmental Health Specialist trainees to fill a vacancy and expand the team.



Environmental Soils

2022-23 Work Plan Projects

- Coordinate with DEQ for a South County Groundwater sampling event and funding of a planned existing network of wells.
- Train new staff trainees to become fully integrated team members knowledgeable about permitting, inspections and other onsite wastewater tasks.
- Work with DEQ staff on planning for and funding of long term and regular well sampling events approximately every 10 years to monitor changes in water quality in the aquifer.
- Apply for American Rescue Plan Act (ARPA) funding allocated to address problems related to failing and outdated septic systems through Oregon DEQ. If selected, work in coordination with NeighborImpact to implement and manage the grant program through 2026.
- Continue technical support as necessary toward the completion of the Terrebonne Sewer Feasibility Study.
- Participate in the Upper Deschutes Agricultural Water Quality Management Area Local Advisory Committee.
- Continue to participate in the City of Bend Storm Water Public Advisory Group and the Upper Deschutes Agricultural Water Quality Management Area Local Advisory Committee (Oregon Department of Agriculture).
- Provide financial assistance opportunities to South County property owners to upgrade conventional systems to nitrogen reducing pollution reduction systems through Nitrogen Reducing System Rebates and the NeighborImpact Non-conforming Loan Partnership.
- Review current groundwater protection policies for South County and continuing variance applications with DEQ onsite staff to ensure goals of water resource protection are addressed. Highest risk areas may require greater scrutiny.
- With development occurring in the Newberry Neighborhood in La Pine, review financial assistance programs for groundwater protection efforts. This may include creation of a financial advisory group process to include community members.
- Amend Deschutes County Code Chapter 11.12, Transferable Development Credit Program to implement changes from BOCC Resolution 2019-040.
- Coordinate with the Human Resources Department to evaluate, propose and implement strategies to attract and retain staff to meet increasing service demands in a highly competitive market.

Staff Directory

Todd Cleveland	Environmental Health Supervisor	(541) 617-4714	Todd.Cleveland@deschutes.org
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Lindsey Holloway	Environmental Health Specialist I	(541) 388-6596	Lindsey.Holloway@deschutes.org
Kiley Rucker-Clamons	Environmental Health Specialist II	(541) 383-6709	Kiley.Rucker-Clamons@deschutes.org
Martha Shields	Permit Technician	(541) 385-1706	Martha.Shields@deschutes.org

Planning

Overview

Planning consists of one Planning Director, one Planning Manager, two Principal Planners, two Senior Planners, two Senior Long Range Planners, one Senior Transportation Planner, six Associate Planners, four Assistant Planners and one Administrative Assistant. The Planning Division consists of two operational areas: Current Planning and Long Range Planning. Current Planning processes individual land use applications and provides information to the public on all land use related issues. Long Range Planning addresses the future needs of the county through updates to the comprehensive plan, changes to the County Code and other special projects

Current Planning

Responsible for reviewing land use applications for compliance with Deschutes County Code (DCC) and state law, including zoning, subdivision and development regulations, and facilitating public hearings with Hearings Officers and the BOCC. Staff is also responsible for verifying compliance with land use rules for building permit applications and septic permits; coordinating with Code Compliance to respond to complaints and monitor conditions of approval for land use permits; performing road naming duties; providing assistance at the public information counter, over the telephone and via email; and addressing in the rural County and City of Redmond under contract.

Long Range Planning

Responsible for planning for the future of Deschutes County, including developing and implementing land use policy with the BOCC, Planning Commission, community and partner organizations. It is in charge of updating the County Comprehensive Plan and zoning regulations, coordinating with cities and agencies on various planning projects taking place in the region, including population forecasts with Portland State University and cities. Staff also monitors and participates in annual legislative sessions, and serves on numerous local, regional and statewide committees primarily focusing on transportation, natural resources, growth management and economic development.

Transportation Planning

Provides comments and expertise on land use applications, calculates System Development Charges (SDC's) as part of land use application review process or upon request; provides comments to the County's Risk Management Department regarding traffic issues for permitted events; participates in the annual County Capital Improvement Plan (CIP) process with the Road Department; applies for grants for enhanced bicycle and pedestrian facilities in coordination with the Bicycle and Pedestrian Advisory Committee (BPAC); participates in Oregon Department of Transportation (ODOT) funded refinement planning; coordinates road issues with Bureau of Land Management (BLM) and the United States Forest Service (USFS) for urban interface plans; and serves on several local and regional transportation committees, most notably BPAC, the Bend Metropolitan Planning Organization Technical Advisory Committee, and Central Oregon Area Commission on Transportation Technical Advisory Committee (TAC).

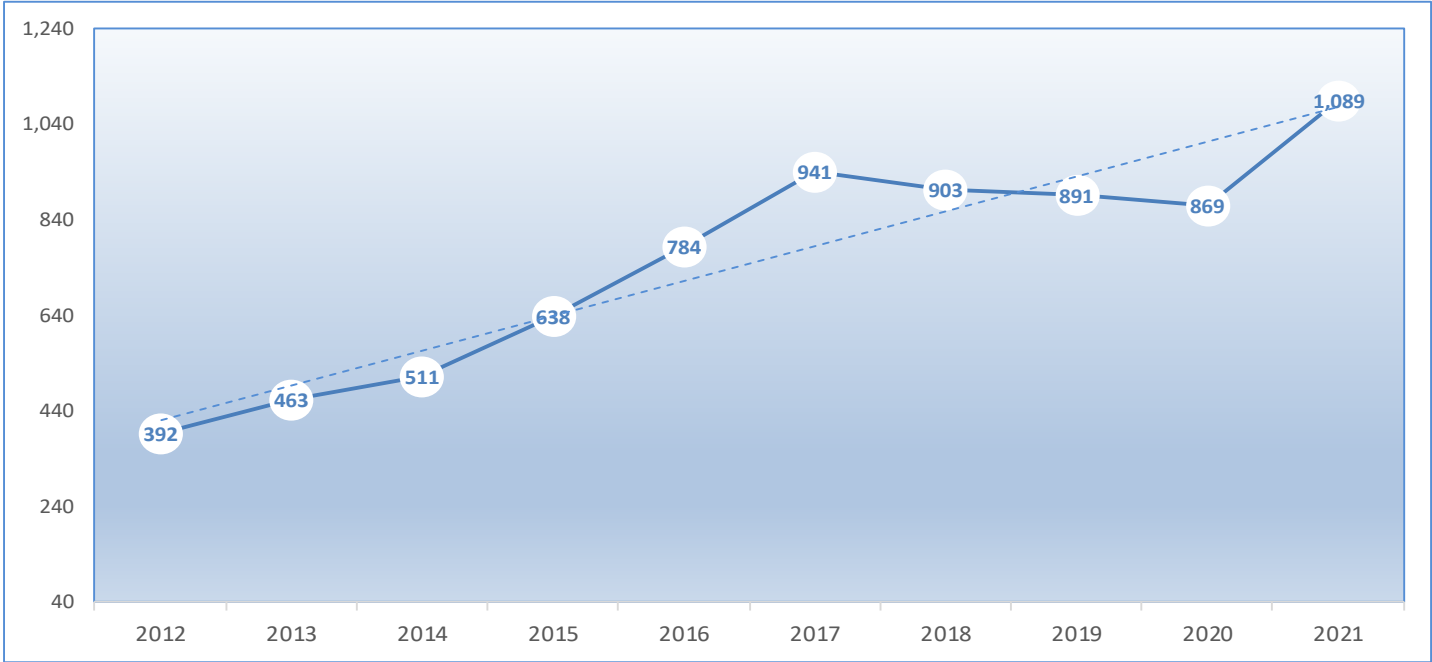
Floodplain & Wetlands Planning

Responsible for providing comments and expertise on land use applications, code compliance, and general property inquiries that require development, fill, or removal in mapped floodplain and wetland areas. Staff maintains certification as an Association of State Floodplain Managers (ASFPM) Certified Floodplain Manager to provide customers with up-to-date and accurate information regarding Federal Emergency Management Agency (FEMA) regulations, surveying requirements, and construction requirements. Coordination is frequently required with external agencies including FEMA, US Army Corps of Engineers, Oregon Department of State Lands, Oregon Department of Fish and Wildlife (ODFW), and USFS.

2021 Year in Review

- ✓ Counter coverage averaged 219 customer visits a month compared to 197 in 2020.
- ✓ Staff responded to 2,332 emails and 2,920 phone call inquiries. This equates to over 194 emails and 243 phone calls per month during 2021.
- ✓ Received 1,089 land use applications compared to 869 in 2020, an increase of 25.3% over prior year.
- ✓ The Planning Division received 27 non-farm dwelling applications compared with 29 for 2020.
- ✓ 18 final plats were recorded in 2021 or are in the process of being recorded, creating a total of 154 residential lots.
- ✓ Issued a Request for Proposal (RFP) for a Comprehensive Plan Update.
- ✓ The Planning Division continued to offer electronic meetings for pre-application, Hearings Officer, Historic Landmarks Commission, and Planning Commission proceedings. Significant efforts were made to ensure each body, applicants, and members of the public could utilize this new technology. Meetings were also available by phone. Staff utilized social distancing protocols when members of the public met in-person. Throughout this transition, the division continued to meet its performance measures related to processing land use applications.

Land Use Applications



Planning

2021 Year in Review, continued

Twenty (20) land use applications were reviewed by Hearings Officers in 2021 compared to 15 in 2020. They include:

- ✓ Caldera Springs Resort Final Master Plan
- ✓ Cell Tower (2 applications)
- ✓ Measure 49—Modification of Conditions
- ✓ Non-farm Dwelling (2 applications)
- ✓ Plan Amendment/Zone Change (2 applications)
- ✓ Private Air Strip
- ✓ Replacement Dwelling
- ✓ Sunriver Wastewater Treatment Facility
- ✓ Template Dwelling (3 applications)
- ✓ Thornburgh Destination Resort LUBA Remand
- ✓ Thornburgh Destination Resort Master Plan Modification
- ✓ Thornburgh Destination Resort Site Plan for Lodging
- ✓ Thornburgh Destination Resort Tentative Plat
- ✓ Variance
- ✓ Wildlife Area Dwelling Siting Requirement

The BOCC conducted 16 quasi-judicial land use hearings or proceedings in 2021 compared to 14 in 2020. Three involved appeals heard by the BOCC (*):

- ✓ Campground*
- ✓ Consideration of Appeal—Non-farm Dwelling (2 applications)
- ✓ Consideration of Appeal—Private Airstrip (2 applications)
- ✓ Consideration of Appeal—Replacement Dwelling
- ✓ Consideration of Appeal—Thornburg LUBA Remand
- ✓ Hydroelectric Facility*
- ✓ Improvement Agreement—Westgate Subdivision
- ✓ Noise Variance
- ✓ Reconsideration of a Tentative Plat*
- ✓ Redmond UGB Amendment—Affordable Housing Project
- ✓ Road Naming (4 applications)

Eleven (11) appeals were filed with the Land Use Board of Appeals (LUBA) in 2021, compared to 7 in 2020:

- ✓ Hydro Electric Facility
- ✓ Nonfarm Dwelling (2 applications)
- ✓ Plan Amendment / Zone Change
- ✓ Replacement Dwelling
- ✓ Tentative Plat
- ✓ Thornburgh Destination Resort—Tentative Plat & Site Plan
- ✓ Thornburgh Destination Resort—Quasi-Municipal Water right (4 applications)



2021 Year in Review, continued

The Planning Division processed two applicant-initiated Plan Amendment/Zone Changes and one zoning text amendment in 2021:

- ✓ Plan amendment and zone change for Exclusive Farm Use (EFU) property near 27th Street.
- ✓ Plan amendment and zone change for EFU property near the Bend Airport.
- ✓ Zoning text amendment to clarify slope setbacks in the Westside Transect Zone.

Legislative Amendments

The BOCC adopted:

- ✓ *Guest Ranch / Subdivision Road Design Amendments*—Staff-initiated legislative amendments to update the guest ranch sunset clause consistent with changes to state law and correct existing regulations related to subdivision road design requirements.
- ✓ *Housekeeping Amendments*—Staff-initiated legislative amendments to correct minor errors in the DCC.
- ✓ *Marijuana Housekeeping Amendments*—Staff-initiated legislative amendments to clarify existing regulations related to marijuana.
- ✓ *Marijuana Retail / Annual Inspection Amendments*— Staff-initiated legislative amendments to extend recreational marijuana retail hours of operation and modify annual reporting requirements for marijuana production businesses.
- ✓ *Westside Transect Amendments*— Applicant-initiated legislative amendments to clarify slope definition.



Planning

2021 Year in Review, continued

Grants

Certified Local Government Grant

Planning staff administered an 18-month \$11,500 Certified Local Government (CLG) Grant from the State Historic Preservation Office (SHPO) to assist Deschutes County with its historic preservation programs.

Technical Assistance Grant

Planning staff completed an 18-month \$12,000 Technical Assistance (TA) Grant from the Department of Land Conservation and Development (DLCD) to discuss WMAC recommendations and begin updating Goal 5 wildlife habitat inventories.

Transportation Growth Management Grant

Planning staff coordinated with the ODOT to execute a \$75,000 Transportation and Growth Management (TGM) Grant to update the Tumalo Community Plan and implement the rural trails portion of the Sisters Country Vision Action Plan.

Coordination with Other Jurisdictions, Agencies and Committees

Bicycle and Pedestrian Advisory Committee

BPAC met 12 times, commenting on regional Transportation System Plan (TSP) updates, trail connections between cities and recreation areas, bicycle and pedestrian safety issues and ODOT projects, among others.

Cascade East Transit

Served on stakeholder committee for Bend to Mt. Bachelor/Elk Lake Summer Shuttle.

Oregon Department of Transportation

Participated in Terrebonne Refinement Plan TAC; Parkway Facility Management Refinement Plan TAC; Wickiup Jct. Refinement Plan (with City of La Pine); Bend US 97 North Corridor Planning; TAC for potential US 97 interchange slightly north of Bend; quarterly meetings with ODOT, Road Dept., and cities of Bend and Sisters to review traffic modeling needs; participated in ODOT Highway Safety Plan goal setting; stakeholder committee for ODOT study on wildlife passages for US 20 between Bend and Santiam Pass; and served as Central Oregon representative to Governor’s Advisory Committee on Motorcycle Safety.

Deschutes River Mitigation and Enhancement Committee

Convened a Deschutes River Mitigation and Enhancement Committee meeting to receive updates from ODFW and Central Oregon Irrigation District (COID).



2021 Year in Review, continued

Coordination with Other Jurisdictions, Agencies and Committees

City of Bend—Coordinated with City staff regarding:

- Bend Airport Master Plan.
- Bend Urban Growth Boundary (UGB) Amendment / HB 4079 / Affordable Housing Project.
- RFP for Real Property Disposition and Development for Simpson Property.
- Bend Metropolitan Planning Organization TAC.

City of La Pine—Coordinated with City staff regarding:

- Land use applications for effects on county road system.
- Wickiup Junction Refinement Plan.
- Preparing TGM grant to update the master plan for County-owned property in the Newberry Neighborhood.
- RFPs for Real Property Disposition and Development for Newberry Neighborhood Quadrant 2a and 2d.

City of Redmond—Coordinated with City staff regarding:

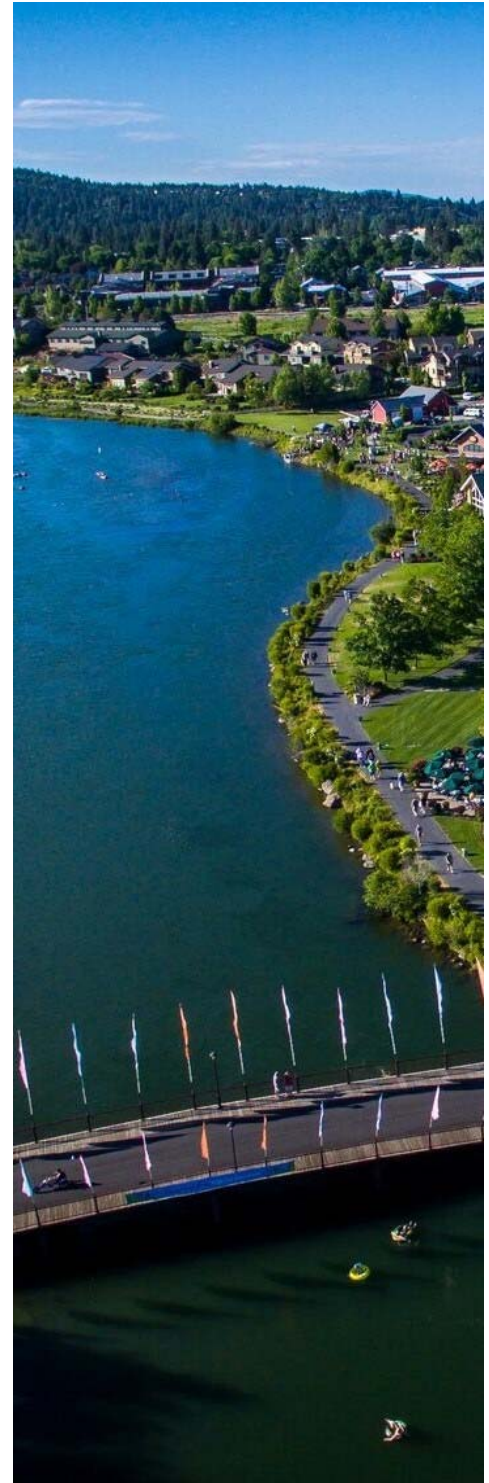
- Redmond UGB Amendment / HB 236 / Affordable Housing Pilot Project.

City of Sisters—Coordinated with City staff regarding:

- Implementing Sisters Country Vision Plan.

Deschutes County

- Participated in Special Transit Funding Advisory Committee to review grant applications and award funds for transit providers and social service agencies.
- Convened a Cannabis Advisory Panel per HB 3295.
- Provided updates to BOCC regarding Non-resource lands, Natural Resource Stewardship Position, SB 391 (Rural ADUs), SB 762 (Wildfire Mitigation), wildlife inventories produced by ODFW, and dark skies project.
- Provide updated to BOCC for RV park, manufactured home park, and campground expansions, and Agri-tourism opportunities.



Planning

2022-23 Work Plan Projects

Development Review

- Respond to phone and email customer inquiries within 48 to 72 hours.
- Issue all administrative (staff) decisions for land use actions that do not require prior notice within 21 days of determination of a complete application.
- Issue all administrative (staff) decisions for land use actions requiring prior notice within 45 days of determination of a complete application.
- Process Hearings Officer decisions for land use actions and potential appeals to the BOCC within 150 days per State law.
- Develop websites accessible to the public to view records associated with complex land use applications.
- Develop an interactive map for the Bend Airport that links land use approvals to specific structures and hangars.
- Develop an interactive map for destination resorts that links land use approvals to specific phases.

Comprehensive Plan Update

- Administer a multi-year process to update the Comprehensive Plan.
- Engage Terrebonne and Newberry County residents to determine if community plans, goals, and policies meet the current and future needs of the area and whether there is an interest and readiness for a community plan update.

Natural Resources

- *Natural Hazards*—Develop a work plan to amend the Comprehensive Plan and County Code requiring defensible space and fire-resistant building materials per SB 762 (2021, Wildfire Mitigation).
- *Wildlife Inventories*—Amend the Comprehensive Plan and Zoning Code to incorporate a new mule deer winter range inventory from ODFW.
- *Sage Grouse*—Participate as a cooperating agency with the Bureau of Land Management (BLM) to evaluate alternative management approaches to contribute to the conservation of the Greater Sage-grouse and sagebrush habitats on federal lands.

Transportation Growth Management (TGM) Grant

- Update the Tumalo Community Plan.
- Implement the rural trails portion of the Sisters Country Vision Action Plan.

Transportation Planning

- Amend Comprehensive Plan to incorporate TSP update in coordination with Road Department and ODOT.
- Process Road Naming requests associated with certain types of development on a semi-annual basis.

Planning

2022-23 Work Plan Projects, continued

City of Bend Coordination

- Amend the City of Bend UGB and County zoning to implement HB 4079, affordable housing project.
- Adopt the Bend Airport Master Plan (BAMP) and amend the County's Comprehensive Plan and Development Code to incorporate the updated BAMP and implementation measures to allow new airport-related businesses.
- Coordinate with City of Bend on growth management issues, including technical analyses related to housing and employment needs.

City of La Pine Coordination

- Participate with Property Management and the City of La Pine process to update and amend the County-owned Newberry Neighborhood comprehensive plan designations, master plan and implementing regulation.

City of Redmond Coordination

- Coordinate with City of Redmond to implement their Comprehensive Plan update.
- Coordinate with City of Redmond and Central Oregon Intergovernmental Council on CORE3, multi-stakeholder regional emergency coordination center.

City of Sisters Coordination

- Participate in the implementation of Sisters Country Vision Plan and City of Sisters Comprehensive Plan Update.



2022-23 Work Plan Projects, continued

Growth Management Committees

- Coordinate and/or participate on Deschutes County BPAC, Project Wildfire, and Mitigation and Enhancement Committee.

Historic Preservation—Certified Local Government Grant

- Administer the 2021-2022 CLG Grant from the SHPO.
- Apply for 2023-2024 CLG Grant, including coordination with the Historic Landmarks Commission and the City of Sisters on priority projects to include in the grant proposal.

Housekeeping Amendments

- Initiate housekeeping amendments to ensure County Code complies with State law.

Housing Strategies

- Amend County Code to implement SB 391, Rural ADUs.
- Amend County Code to remove barriers to the placement of small manufactured homes that otherwise meet building code specifications.
- Amend County Code to repeal Conventional Housing Combining Zone.
- Amend County Code to define family for unrelated persons HB 2538, Non-familial Individuals
- Explore options and approaches to address rural housing and homelessness as allowed under State law.
- Monitor Terrebonne and Tumalo Sewer Feasibility Studies.

Legislative Session (2022-23)

- Participate in legislative or rulemaking work groups to shape State laws to benefit Deschutes County.

Planning Commission Coordination

- Coordinate with the BOCC to establish strategic directions for the Planning Commission.



Planning

2022-23 Work Plan Projects, continued

Zoning Text Amendments

- Minor variance 10% lot area rule for farm and forest zoned properties.
- Outdoor Mass Gatherings to be addressed more thoroughly.
- Re-platting.
- Sign code to become consistent with federal law.
- Accessory structure amendments clarifying they must be built concurrent with or after the establishment of a primary residence. Specify allowed facilities (baths, cook tops, wet bar) in residential accessory structures.
- Section 6409(a) of the Spectrum Act (Wireless Telecommunication Amendments).
- In conduit hydroelectric generation code amendments.
- Revisit Amateur Radio Tower regulations.

Staff Directory

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Community Involvement Report

2021

Statewide Planning Goal 1, Citizen Involvement, requires cities and counties to create a citizen involvement program that provides opportunities for community participation in land use planning processes and decisions.

Land use legislation, policies and implementation measures made by Oregonians nearly 50 years ago helped shape Oregon’s urban and rural environments. Likewise, choices made today will ultimately shape these areas in the future. Successful land use planning occurs through an open and public process that provides room for information gathering, analysis and vigorous debate. Deschutes County’s Community Involvement program is defined in Section 1.2 of the Comprehensive Plan.

This chapter identifies the County Planning Commission as the committee for citizen involvement. It also contains the County’s Community Involvement goal and corresponding five policies that comply with Goal 1. This report briefly discusses the noteworthy community involvement actions undertaken by the Planning Division in 2021. The report is intended to provide county residents and stakeholders with a tool to assess its effectiveness and offer additional suggestions the County can utilize to ensure that its diverse communities remain actively involved in land use planning discussions.



Community Involvement Report

2021

Planning Commission



The Planning Commission convened 21 times to consider:

- ✓ CDD FY 2021-22 Annual Report & Work Plan
- ✓ Dark Skies Update
- ✓ Deschutes County Noxious Weed Program
- ✓ Deschutes 2040—Orientation to Statewide Planning Goal 8
- ✓ Deschutes 2040—Orientation to Statewide Planning Goal 9
- ✓ Deschutes 2040—Orientation to Statewide Planning Goals 10, 11, 13 and 14.
- ✓ DLCD TA Grant / Update / Progress Report
- ✓ Guest Ranch and Title 17 Amendments
- ✓ Hemp and Title 17 Amendments
- ✓ Hemp Panel Discussion
- ✓ Joint BOCC / Planning Commission Work Session
- ✓ Marijuana Housekeeping Amendments
- ✓ Marijuana Retail and Annual Reporting Text Amendments
- ✓ Natural Resource Stewardship Position
- ✓ Planning Division Work Plan Update
- ✓ Rural Economic Development Discussion
- ✓ Rural Economic Development Opportunities Panel Discussion
- ✓ SB 391—Rural ADU Legislation
- ✓ TGM Grant Update
- ✓ TSP Update
- ✓ Tumalo Roundabout Update
- ✓ Water Panel Discussion and Preparation
- ✓ Westside Transect Amendment
- ✓ Wildlife Inventory Update & Virtual Open Houses
- ✓ Wildfire Mitigation Amendments and SB 762

Community Involvement Report

2021

Historic Landmarks Commission



Convened 4 times in 2021 to consider:

- ✓ Camp Polk Pioneer Cemetery
- ✓ CDD FY 2021-22 Annual Report & Work Plan
- ✓ Certified Local Government Grant Application
- ✓ City of Sisters Check-In
- ✓ Field Trip Discussion
- ✓ Historic Landmarks Commission Policies and Procedures Manual
- ✓ Regional Coordination
- ✓ Updates from Bend and Redmond Historic Landmarks Commission

Meeting May 11th.

Hello, my name is Gary Sherman and I live at 61585 K Barr Road about 8 Miles East of Bend directly off Highway 20. I'm here today to ask the Deschutes County Commissioners to draft a legislative amendment on the existing code: DCC 18.84.050 and add this item to the Deschutes County Commissioners Workplan to prevent the possibility of AT&T placing any future Cellular Towers on ODOT land in Deschutes County.

My wife and I moved out to K Barr Road six years ago and we did our due diligence before we purchased our property. We have detrimentally relied on Deschutes County Code to prevent any nuisance structures (anything over 30 feet) that could be built affecting our home. Before we purchased our home, we looked up the zoning which is EFU and we also found out that this entire corridor was protected by DCC 18.84.050. Nothing could be built over 30 feet because of the Land Management Overlay which extends ¼ mile from the center of Highway 20 in both directions. This was particularly important to both my wife and I because years ago we lived in a home; that at the time, had undeveloped land behind our house. The land sold, and two-story homes were built with almost no set back from our rear property line. This ruined our privacy and vistas of the hills behind our home. Ever since that happened, we have been careful to understand the land use laws that might have some affect to our property. We felt confident that after understanding and relying on Deschutes County Code DCC 18.84.050 we would be able to live in our current location free of development and our views would be forever protected and kept pristine.

AT&T and ODOT are taking advantage Deschutes County with a loophole they found. Because ODOT doesn't require a building permit in their ROW property and Deschutes County said a building permit is what triggers the LM Overlay they are trying to build a 150 Foot Cellular tower without a permit. Deschutes County and Planning Staff should have never allowed this to take place. DCC 18.84.050 was written specifically to maintain scenic vistas. Staff and county attorneys should have researched the history of DCC 18.84.050 and realized that what both AT&T and ODOT are trying to get away with is against the intent of DCC 18.84.050. Throughout my many conversations with Staff, and having conversations throughout the entire planning department, not one person knew the history of the code or for that fact even knew the current version of DCC 18.84.050.

In my eyes this entire Land Use process is flawed. This case went to a hearings officer and his decision never considered the history of DCC 18.84.050 nor did he investigate the true intent the authors had in mind when writing the Land Management Overlay code. Deschutes County Staff as well as staff attorneys at the very beginning of this should have gone back through the history of the code and should have determined that the code never intended to allow a 150-foot cellular tower to be built dead in the middle of the LM Overlay.

DCC 18.84.050 has changed approximately five times since 1990 and this loophole has literally been created because a comma was left out of the first sentence of DCC 18.84.050. This code throughout time has changed to prevent the "Site Plan Review Process" from being triggered by minor alterations and changes to a structure that no one cared about. Building a deck, adding a window, or a pergola. A New Structure was always supposed to be subject to reviews. Anyone with any common sense would realize this.

The following is from DCC 18.84.010. It is the Purpose of the LM Combining Zone. It reads as follows.

18.84.010 Purpose. The purpose of the Landscape Management Combining Zone is to Maintain scenic and natural resources of the designated areas and to maintain and enhance scenic vistas important to the local economy.

The purpose clearly states that the code was written to prevent something like a 150-foot cell tower from being built.

The current version of the code reads like this.

18.84.050. Use limitations. A. Any new structure or substantial alteration of a structure requiring a building permit, or an agricultural structure, within an LM Zone shall obtain site plan approval in accordance with DCC 18. 84 and DCC 18. 124, Site Plan Review, prior to construction. As used in DCC 18. 84 substantial alteration consists of an alteration which exceeds 25 percent in the size or 25 percent of the assessed value of the structure.

I believe Staff is misreading the code. Any new structure has always been subject to plan review, where as “or substantial alteration of a structure requiring a building permit” is the part of the sentence that should only be tied to the building permit. The authors never anticipated a ODOT loophole that does not require them to obtain a permit. Also, I’m sure the authors never intended for the code to be interpreted the way it is currently be interpreted.

It's important to understand the changes of the code and why they were made.

1979 Version PL-15 11/1/1979 (Original)

5) Use Limitations. No structure, including agricultural buildings, shall be erected, or substantially altered externally within one-quarter mile (measured at right angles from centerline of any identified landscape management roadway or within 200 feet of the mean high-water mark of any identified landscape management corridor along a river) without first obtaining the approval of the "Planning Director”

This version included everything which I’m sure overwhelmed staff.

1992 Version 92-034 4/28/1992 This is when the (Building Permit is tied to substantial alteration).

18. 84. 050 Use Limitations. 1. [No] Any new structure or substantial alteration of a structure requiring a building permit, or [structure including] an agricultural structure[s,] within an LM Combining Zone shall obtain site plan approval in accordance with this Chapter and Chapter 18. 124, Site Plan Review, prior to construction. As used in this chapter substantial alteration consists of an alteration which exceeds 25% in the size or 25% of the assessed value of the structure. [one- quarter mile (measured at right angles from centerline of any identified landscape management roadway or within 200 feet of the ordinary high-water mark of any identified landscape management corridor along a river) without first obtaining the approval of the Planning Director or Hearings Body.] 2. Structures which are not visible from the designated roadway, river, or stream and which are assured of remaining not visible because of

vegetation, topography, or existing development are exempt from the provisions of Section 18. 84. 080 (Design Review Standards) and Section 18. 84. 090 (Setback Standards). An applicant for site plan review in the LM zone shall conform with the provisions of this Chapter, or may submit evidence that the proposed structure will not be visible from the designated roads river or stream. Structures not visible from the designated road, river or stream must meet setback standards of the underlying zone.

It is very clear that this version was written to exclude unnecessary review from the planning Director. Minor alterations and structures that were not visible, are changes that were made to the code to eliminate staff from the burden of having to waste time reviewing unnecessary alterations. Was the comma just left out by mistake by not understanding proper English grammar or the misinterpretations it could cause?

Regardless, when you read the code, Any new structure-stands alone in all the prior versions of the code, and staff is the one that has attached the building permit to, “any new structure and a structure requiring a building permit”.

I am requesting that the commissioners add this item to your workplan so you can draft a legislative amendment to add a comma to the current version of DCC 18.84.050 to clarify that any new structure is always subject to the LM Overlay. If only a comma had been added to the current version of the code we would not even be having this discussion.

If it were written as follows there would not be any misinterpretation.

18.84.050. Use limitations. A. Any new structure, or substantial alteration of a structure requiring a building permit, or an agricultural structure, within an LM Zone shall obtain site plan approval in accordance with DCC 18. 84 and DCC 18. 124, Site Plan Review, prior to construction. As used in DCC 18. 84 substantial alteration consists of an alteration which exceeds 25 percent in the size or 25 percent of the assessed value of the structure.

Thank you for your time on this especially important matter to hopefully stop this egregious cell tower and any future possibilities of Deschutes County allowing ODOT and ATT to build towers on their property without permits.

Regards,

Gary and Karen Sherman

61585 K Barr Road
Bend, OR 97702



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 11, 2022

SUBJECT: Westgate Phase 8 Improvement Agreement

RECOMMENDED MOTION:

Move approval and signature of Document No. 2021-230.

BACKGROUND AND POLICY IMPLICATIONS:

The Westgate development is an 85-lot subdivision approved pursuant to land use permits 247-19-000500-MP and 247-19-000501-TP. Figure 1 below illustrates the subject property, with the 9 lots of Phase 8 in the southeast corner.

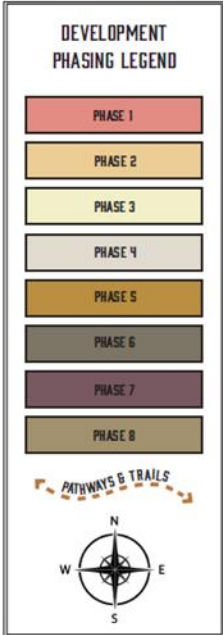
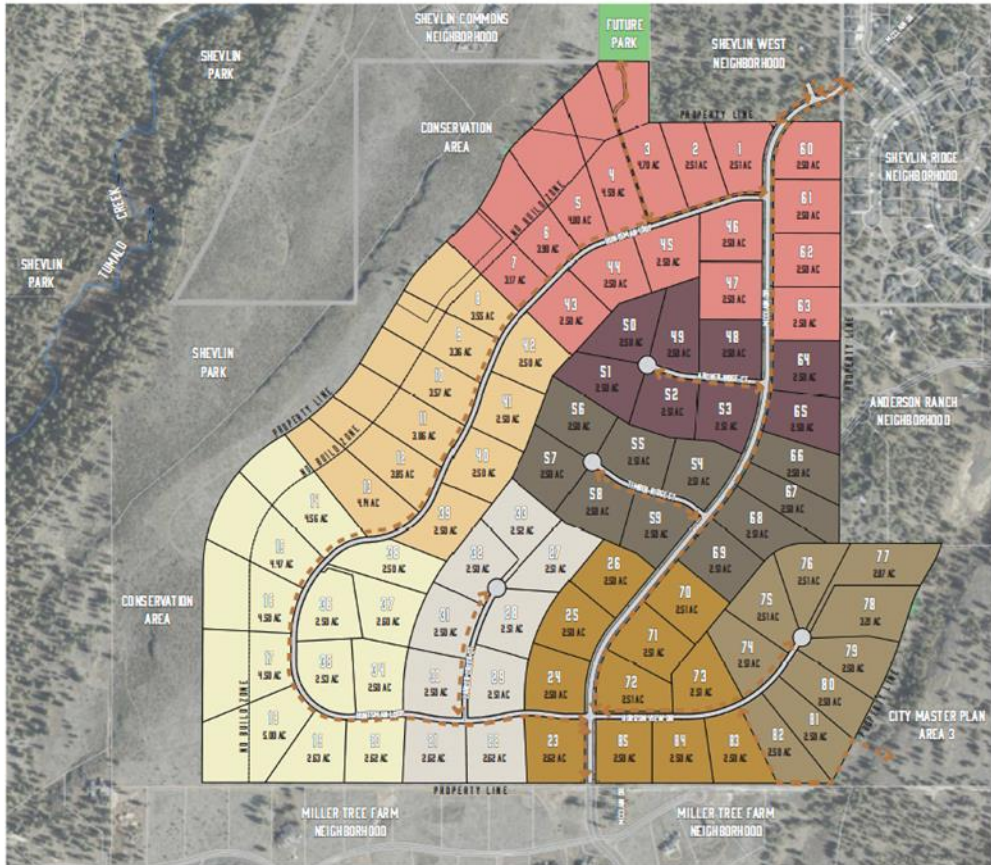


Figure 1. Westgate Subdivision Location and Phasing Map
(Source: Westgate)

Phases 1-7 of Westgate have been platted. The developer now seeks to plat Phase 8.

Westgate submitted the attached Improvement Agreement for road and utility infrastructure related to Phase 8. The cost estimate for said improvements is \$133,395.00. This estimate was reviewed and approved by the Road Department. Per Deschutes County Code 17.24.130(B), the security amount must be 120 percent of the cost estimate. For this reason, the bond submitted by Westgate is in the amount of \$160,074.00.

BUDGET IMPACTS:

None.

ATTENDANCE:

Anthony Raguine, Principal Planner

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

After Recording Return to:
Deschutes County
Community Development Department
147 NW Lafayette Street
Bend, OR 97703

IMPROVEMENT AGREEMENT

This Improvement Agreement (“Agreement”), relating to the construction and installation of certain required improvements (the “Required Improvements,” as defined below in Section 4) on Phase 8, within the Westgate Subdivision, is by and between DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon (“County”) and Empire Westgate LLC (“Developer”).

RECITALS:

- A. Developer filed an application for final subdivision plat approval for the tentative subdivision plan approved under File No. 247-19-000500-MP and 247-19-000501-TP (the “Land Use Approval”) prior to the completion of the Required Improvements.
- B. Deschutes County Code (DCC) Section 17.24.120 provides that a developer may, in lieu of completing improvements specified in tentative plan approval prior to filing a final subdivision plat, enter into an agreement with the County and provide a good and sufficient form of security to provide for the completion of such improvements.
- C. The Required Improvements under this Agreement do not constitute a Public Improvement as the term is defined in ORS 279A.010(1)(cc).
- D. County and Developer desire to enter into this Agreement in order to establish the obligation and to secure completion of the Required Improvements following recording of the final plat for the Land Use Approval.

NOW THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual obligations hereinafter stated, as follows:

- 1. **Recitals.** The Recitals to this Agreement set forth above are hereby incorporated herein as if fully set out, shall constitute contractual provisions and are not mere recitals.

2. Real Property Description. The real property subject to this Agreement (the “Real Property”) is identified as Map and Tax Lot 1711350001200 and more particularly described on the attached Exhibit A. This Agreement shall be recorded against and shall encumber the Real Property and every developable unit of land lawfully created from the Real Property (each, a “Lot”) subject to Section 20 below.

3. Exhibits. The exhibits listed below and attached to the Agreement are hereby incorporated herein by reference:

4.1 Exhibit A & B – Legal description of Real Property.

4.2 Exhibit C – List of Required Improvements.

4.3 Exhibit D – Copy of Land Use Approval.

4.4 Exhibit E – Bond Instrument.

4. Identification of Required Improvements. Developer shall install and complete, or cause to be installed and completed, the improvements listed in Exhibit C and required by the Site Plan set forth in Exhibit B to the extent that same remain to be completed (the “Required Improvements”).

5. Construction of Required Improvements.

5.1 Developer shall install and complete the Required Improvements in accordance with the plans and construction specifications related thereto and to any additional County and/or State of Oregon specifications or applicable regulations. Developer shall cause the Required Improvements to be completed in compliance with the applicable codes, regulations, and laws then in effect.

5.2 Developer shall promptly repair any damage to existing and new roads, water lines, stormwater facilities, and similar facilities within and without the Real Property, which are caused by the installation of the Required Improvements.

5.3 Developer shall schedule final inspections and shall have the Required Improvements in a condition determined by County to be sufficient not later than one year from the date the final plat is recorded (the “Completion Date”).

6. Warranty of Improvements.

6.1 For twelve (12) months following the Completion Date (“Warranty Period”) Developer hereby warrants that (i) the Required Improvements, and any corrective work, shall remain free from defects in materials or workmanship, (ii) the Required Improvements shall continue to meet all plan and construction specifications (iii)

that the Required Improvements shall continue to meet any County and/or State of Oregon specifications or applicable regulations as noted in Section 5.1.

- 6.2 If the warranty obligations set forth in Section 6.1 are not satisfied, County will provide notice to Developer of any required corrective work and a reasonable timeframe in which the corrective work must be initiated and completed. Notwithstanding the foregoing, County may initiate corrective work without notice to Developer in the event of an emergency.
- 6.3 To secure warranty obligations pursuant to DCC 17.24.120(A)(5) and this Section 6, upon completion of the Required Improvements and prior to the Developer scheduling a final inspection pursuant to Section 5.3, Developer shall deposit with the County a one-year warranty bond, or other security acceptable to County, equivalent to ten-percent (10%) of the construction costs of such Required Improvements (“Warranty Security”).
- 6.4 If Developer fails to timely initiate or complete work as provided in Section 6.2, or in the event of an emergency, County may draw upon the Warranty Security during the Warranty Period to perform the corrective work in the same manner as Section 8.4.

7. License to Enter and Remain on Property.

- 7.1 During the term of this Agreement, Developer hereby grants County and County’s employees, engineers, consultants, agents, contractors, subcontractors and suppliers license to come onto and remain on the Real Property as necessary to make inspections of the Required Improvements.
- 7.2 After the Default Grace Period specified in Section 8.2 or to correct an issue during the Warranty Period specified in Section 6.2, and after providing notice to Developer, County or its employees, engineers, consultants, agents, contractors, subcontractors and suppliers may enter onto and remain on the Real Property and may cause the Required Improvements to be completed.

8. Right to Draw on Security.

- 8.1 Upon failure of the Developer to complete the Required Improvements as required under Section 5.3 above by the Completion Date, County shall notify Developer in writing of such failure (the “Default Notice”).
- 8.2 Upon receipt of the Default Notice, Developer shall have thirty (30) days to complete the Required Improvements to the condition required under Section 5 (the “Default Grace Period”).
- 8.3 Should Developer fail to complete the Required Improvements within the Default Grace Period, County may, at its sole discretion, cause incomplete or unsatisfactory Required Improvements to be completed.

- 8.4** If County causes the Required Improvements to be completed, County may draw upon the Security for any and all costs and expenses incurred by County including, but not limited to, attorneys and engineering fees, and costs and expenses reasonably anticipated or projected by the County to be incurred by the County, in construction and/or completion of the Required Improvements.
- 8.5** If County affirmatively elects (with written documentation of same signed by the Chair of the Board of County Commissioners) not to cause the Required Improvements to be completed, County shall within 180 days cause the Security to be released to Developer.
- 8.6** For the purposes of this Agreement and access to any security offered and accepted to secure Developer's performance, Developer's failure to complete the Required Improvements shall include failure to install or have installed any portion of the Required Improvements to the standards required under Section 5 above.
- 9. No County Guarantee.** County does not warrant or guarantee that any of the Required Improvements referred to in this Agreement will be constructed, maintained or operated.
- 10. License to Use Permits, Specifications and Plans.**
- 10.1** If County determines that any portion of the Required Improvements have not been completed as required by Section 5 above or remain free of defects during the Warranty Period as required by Section 6, Developer shall, upon request of the County, license and assign to County all of Developer's, applicable permits, plans, specifications, shop drawings, instruments, permits and approvals, and other documents necessary or useful in the completion or repair of or related in any manner to the applicable Required Improvements.
- 10.2** Developer shall ensure that any contracts for supply of labor and materials used in connection with constructing Required Improvements are assignable to the County.
- 10.3** Upon such request, Developer shall deliver or shall cause to be delivered, physical possession of such permits, plans, specifications, shop drawings, instruments, permits, approvals, and other documents to the County.
- 10.4** County may sub-assign or license the rights referred to in this Section 10 for any purpose without further approval from Developer.
- 11. No Third-Party Beneficiaries.**
- 11.1** County and Developer are the only parties to this Agreement and are the only parties entitled to enforce its terms.

- 11.2 Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons.
12. **Restoration of Monuments.** Developer shall restore any monument erected or used for the purpose of designating a survey marker or boundary of any town, tract, plat or parcel of land that is broken, damaged, removed or destroyed, during the course of work provided for or anticipated by this Agreement, whether intentional or otherwise, by the Developer or Developer's agents, employees, independent contractors, or persons or entities other than County.
13. **Costs of Inspection.** Developer shall pay to County the actual costs incurred by County in the inspection of the completed Required Improvements plus any fees, such as legal review fees, plan review fees and structural, electrical, plumbing and other specialty codes inspection fees normally associated with the review and inspection of any improvements on the Real Property.
14. **Security for Required Improvements.**
- 14.1 Attached as Exhibit D is a copy of a performance bond in the amount of One Hundred Sixty Thousand, Seventy-Four Dollars (\$160,074.00), (the "Security").
- 14.2 As used herein, the issuer of the Security is referred to as "Surety."
- 14.4 Cost Notice Update
- 14.4.1 County, in reasonable intervals, may require the Developer to provide an updated construction cost estimate for the then remaining Required Improvements (the "Cost Update Notice").
- 14.4.2 Upon receipt of the Cost Update Notice, the Developer shall have thirty (30) days to provide the updated construction cost estimate (the "Developer's Response").
- 14.4.3 Upon receipt of the Developer's Response, or if no Response is received within the thirty (30) day period, if the County reasonably determines that the Developer's obligations under this Agreement together with the Security do not provide adequate financial assurance for completion of the Required Improvements, the County shall have the option to require Developer to increase the amount of the Security and to memorialize such increase in an amendment to this Agreement (the "Security Amendment").
- 14.4.4 If the County requires Developer to increase the amount of the Security, Developer shall also file the application fees and materials to amend this Agreement to memorialize the Security Amendment within thirty (30) days of receipt of the County's notice to increase the Security.

14.4.5 If Developer fails or refuses to increase the amount of Security as directed by the County, such failure or refusal shall be considered failure of the Developer to complete the Required Improvements as required under Section 5 and the County may draw upon the Security pursuant to Section 8.

15. Developer's Obligation for Costs.

- 15.1** Developer expressly acknowledges, understands, and agrees that this Agreement shall not relieve Developer from the obligation to complete and fully pay for the Required Improvements, to warranty those Required Improvements, and other costs and fees set forth in this Agreement.
- 15.2** Should Developer default in its obligation to complete the Required Improvements as required by Section 5 or warranty those Required Improvements as required by Section 6, Developer agrees to compensate County for all costs, fees, charges and incurred expenses related to Developer's default.

16. Release of Security or Obligation.

- 16.1** County shall release the Security less any Warranty Security within thirty (30) calendar days of Developer requesting in writing that the Security be released following the final inspection and approval of the Required Improvements. County shall release the Warranty Security within thirty (30) calendar days of the Developer requesting in writing that the Warranty Security be released following the Warranty Period.
- 16.2** County may, at the County's discretion and consistent with applicable law, release Developer from any of Developer's obligations under the terms and conditions of this Agreement.
- 16.3** County's release of any of Developer's obligations shall not be construed as a waiver of County's right to require full compliance with the remainder of this Agreement and Developer's obligation to satisfy any costs, fees, charges and expenses incurred in completion or repair of the Required Improvements.

17. Shortfall in Security.

- 17.1** If the amount available to be drawn from the Security or Warranty Security is less than the costs and expenses anticipated to be incurred, or actually incurred, by County, including, but not limited to, attorneys and engineering fees, County may apply the proceeds of the Security or Warranty Security to the anticipated or actual costs and expenses of completion or repair of the Required Improvements.
- 17.2** Developer shall be responsible and liable for any shortfall between the actual costs and expenses of completion or repair of the Required Improvements, including, but

not limited to, attorneys and engineering fees, and the amount of the Security or Warranty Security available to fund such costs and expenses.

18. Incidental Costs. Without limiting the generality of Section 17, if the proceeds of the Security or Warranty Security are not remitted to County within the timeframe set forth in the Security or Warranty Security after County provides written notice to Surety in the form prescribed by the Surety, or the Required Improvements are not installed within a reasonable time period determined and specifically identified by County after County provides notice to Developer and/or Surety, then County's costs of completing and/or repairing the Required Improvements, the costs of obtaining the proceeds of the Security, Warranty Security, or other security, all incidental costs to the extent not covered by the Security, Warranty Security, or other security, and liquidated damages calculated at the rate of \$500 per day shall be added to the amount due to County from Developer, and shall be paid to County by Developer, in addition to and with all other amounts due hereunder.

19. Successors in Interest.

19.1 The original of this Agreement shall be recorded with the Deschutes County Clerk and shall be a condition and covenant that shall run with the Real Property including any lots created from the Real Property (each a "Lot").

19.2 It is the intent of the parties that the provisions of this Agreement shall be binding upon the parties to this Agreement, and subject to the terms contained in Section 20, their respective successors, heirs, executors, administrators, and assigns, and any other party deriving any right, title or interest in or to the Real Property or any Lot, including any person who holds such interest as security for the payment of any obligation, including a mortgagee or other secured party in actual possession of said Real Property by foreclosure or otherwise or any person taking title from such security holder.

20. Lot Purchasers.

20.1 Notwithstanding the terms of Section 19, the terms of this Section 20 shall apply to each Lot lawfully created from the Real Property in accordance with the Land Use Approval.

20.2 Each Lot shall be conveyed free of any obligation to pay money or complete any obligation arising from or related to this Agreement.

20.3 The owner of a Lot, other than Developer, is under no obligation or burden to complete the terms and conditions of this Agreement.

20.4 The purpose for the recordation of this Agreement is to place owners and prospective purchasers on notice of the Agreement's terms, that the County has no obligation to construct the Required Improvements or any portion of the Required

Improvements, and the Agreement does not in any way guarantee that any of the Required Improvements will be constructed.

20.5 The Agreement conveys no right or right of action by a Lot owner, other than Developer, against the County for any act or omission of the County including, but not limited to, County decisions or acts that required or authorized the Required Improvements, or any part of the Required Improvements, not being constructed.

21. Binding Authorization. By signing this Agreement, each signatory signing in a representative capacity, certifies that the signer is authorized to sign the Agreement on behalf of and bind the signer’s principal.

22. Expiration.

22.1 This Agreement shall expire after the conclusion of the Warranty Period, or by the County’s express written release of Developer from this Agreement.

22.2 Upon expiration, County shall provide Developer with a document in recordable form, formally evidencing such expiration within thirty (30) days of such a request from Developer.

23. Survival. County’s rights under this Agreement, including County’s right to draw upon the Security or Warranty Security in whole or in part, and Developer’s obligation to pay the full costs and expenses of completing the Required Improvements and repairs or replacements required herein along with any licenses granted in this Agreement and any costs of enforcement of this Agreement, shall survive the expiration of this Agreement.

24. No Agency.

24.1 It is agreed by and between the parties that Developer is not carrying out a function on behalf of County, and County does not have the right of direction or control of the manner in which Developer completes performance under this Agreement nor does County have a right to exercise any control over Developer’s activities.

24.2 Developer is not an officer, employee or agent of County as those terms are used in ORS 30.265.

25. No Joint Venture or Partnership. County is not, by virtue of this Agreement, a partner or joint venturer with Developer in connection with the Site Plan, the Required Improvements, the Real Property, or any Lot and shall have no obligation with respect to Developer’s debts, obligations or other liabilities of each and every nature.

26. Liens.

- 26.1** Developer shall pay as due all claims for work done on and for services rendered or materials furnished to the Real Property and shall keep the Real Property free from liens.
- 26.2** If Developer fails to pay any such claims or to discharge any lien, County may do so and collect the cost plus ten percent (10%) from the Developer or Surety; provided, however, County may not pay such claims or discharge any lien while Developer is timely disputing the validity of such claims or liens.
- 26.3** Such action by County shall not constitute a waiver of any right or remedy that County may have on account of Developer's failure to complete the Required Improvements or failure to observe the terms of this Agreement.
- 27. Indemnification.** The County shall not be responsible for any injury to any and all persons or damage to property caused directly or indirectly by reason of any and all activities (including inaction) of Developer under this Agreement and on the Real Property; Developer further agrees to defend, indemnify and save harmless County, its officers, agents and employees from and against all claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected with any such injury or damage.
- 28. Limitation of Liability.** County's liability, if any, pursuant to this Agreement is subject to the Oregon Tort Claims Act, ORS 30.260 to 30.300.
- 29. Attorney Fees and Costs.** In the event an action or suit or proceeding, including appeal therefrom, is brought by any party arising directly and/or indirectly out of the provisions of this Agreement or the interpretation thereof, for Developer's failure to complete the Required Improvements or to observe any of the terms of this Agreement or the interpretation thereof, County shall be entitled to recover, in addition to other sums or performances due under this Agreement, reasonable attorney's fees and costs as the court may adjudge in said action, suit, proceeding or appeal.
- 30. Waiver.**
- 30.1** Waiver of the strict performance of any provision of this Agreement shall not constitute the waiver of any other provision or of the Agreement.
- 30.2** No waiver may be enforced against the County unless such waiver is in writing and signed by the County.
- 31. Compliance with provisions, requirements of Federal and State laws, statutes, rules, regulations, executive orders and policies. Debt Limitation.**
- 31.1** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution.

- 31.2 Any provisions herein that conflict with applicable law, including but not limited to DCC 17.24.120 and 17.24.130, are deemed inoperative to that extent.
- 31.3 Additionally, Developer shall comply with any requirements, conditions or limitations arising under any Federal or State law, statute, rule, regulation, executive order and policy applicable to the Required Improvements.
- 31.4 If this Agreement is in any manner construed to constitute the lending of the County's credit or constitute a debt of County in violation of Article XI, Section 10, of the Oregon Constitution, this Agreement shall be void.
32. **No Inducement.** No representations, statements, or warranties have induced the making and execution of this Agreement other than those herein expressed.
33. **Governing Law.**
- 33.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.
- 33.2 Any claim, action, suit or proceeding (each a "Claim") between County and Developer that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon in Eugene, Oregon.
- 33.3 By signing below, Developer hereby consents to the *in personam* jurisdiction of the courts identified in Section 33.2.
- 33.4 The parties agree that the UN Convention on International Sales of Goods shall not apply.
34. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be void, invalid or unenforceable in one respect, the validity of the term or provision in any other respect and that of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced to the extent possible.
35. **Counterparts.**
- 35.1 This Agreement may be executed in several counterparts, all of which when taken together shall constitute one Agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.
- 35.2 Each copy of this Agreement so executed shall constitute on original.

35.3. If this Agreement is signed in counterpart, each counterpart shall be recorded as provided herein for the recording of this Agreement.

36. Notice.

36.1 Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing to Developer or County at the address or fax number set forth below or to such other addresses or fax numbers as either party may hereafter indicate in writing.

36.2 Delivery may be by personal delivery, facsimile, or mailing the same, postage prepaid.

36.2.1 Communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.

36.2.2 Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission.

36.2.3 To be effective against County, such facsimile transmission shall be confirmed by telephone notice to County's Director of Administrative Services.

36.2.4 Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Agreement shall be mailed by first class mail or delivered as follows:

To Developer:

Empire Westgate LLC
Kevin Spencer
63026 NE Lower Meadow Drive
Suite 200
Bend, OR 97701

To County:

Deschutes County Administration
County Administration
1300 NW Wall Street, Ste 200
Bend, Oregon 97703
Fax No. 541-388-4752

37. Time is of the Essence. Time is of the essence of each and every provision of this Agreement.

38. Captions.

38.1 The captions contained in this Agreement were inserted for the convenience of reference only.

38.2 Captions do not, in any manner, define, limit, or describe the provisions of this Agreement or the intentions of the parties.

39. Amendment.

39.1 The Agreement may only be amended by written instrument signed by both parties and recorded, except that an amendment shall not be recorded against any Lot other than Lots then owned by Developer.

39.2 For purposes of Section 39.1, the signatures of the County shall be the signatures of the Board of Commissioners, Board Chair, or County Administrator.

39.3 Developer shall make application and pay the applicable fee to bring a proposed amendment before the County.

40. Merger Clause. This Agreement and the attached exhibits constitute the entire agreement between the parties and supersedes any and all prior or contemporaneous negotiations and/or agreements among the parties, whether written or oral.

41. Effective Date. Notwithstanding mutual execution of this Agreement, this Agreement shall not become effective until recorded.

Dated this _____ of _____, 2022

BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice-Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

STATE OF OREGON, County of Deschutes) ss.

Before me, a Notary Public, personally appeared PATTI ADAIR, ANTHONY DEBONE, PHIL CHANG, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this ___ day of _____, 2022

Notary Public, State of Oregon

DATED this 22nd day of March, 2022 **DEVELOPER:**

[Signature]

EMPIRE WESTGATE LLC
BY: KEVIN SPENCER
ITS: MANAGER

STATE OF OREGON, County of Deschutes) ss.

Before me, a Notary Public, personally appeared Kevin Spencer, and acknowledged the foregoing instrument as the Manager on behalf of Empire Westgate LLC.

DATED this 22nd day of March, 2022

[Signature]

Notary Public, State of Oregon



EXHIBIT "A"

LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 35, TOWNSHIP 17 SOUTH, RANGE 11 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 83, WESTGATE PHASES 5, 6, & 7, DESCHUTES COUNTY, OREGON;

THENCE NORTH 26°14'04" WEST 466.45 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 665.00 FEET, AN ARC LENGTH OF 38.47 FEET, A TOTAL ANGLE OF 03°18'51", AND A CHORD WHICH BEARS NORTH 62°06'30" EAST 38.46 FEET;

THENCE NORTH 29°32'55" WEST 30.00 FEET;

THENCE NORTH 28°32'00" WEST 421.62 FEET;

THENCE NORTH 39°30'10" EAST 483.54 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET, AN ARC LENGTH OF 264.84 FEET, A TOTAL ANGLE OF 50°34'52", AND A CHORD WHICH BEARS NORTH 64°47'36" EAST 256.33 FEET;

THENCE SOUTH 89°54'58" EAST 752.35 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 515.00 FEET, AN ARC LENGTH OF 129.27 FEET, A TOTAL ANGLE OF 14°22'55", AND A CHORD WHICH BEARS SOUTH 23°34'46" WEST 128.93 FEET;

THENCE SOUTH 30°46'13" WEST 120.44 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 585.00 FEET, AN ARC LENGTH OF 127.38 FEET, A TOTAL ANGLE OF 12°28'33", AND A CHORD WHICH BEARS SOUTH 24°31'57" WEST 127.13 FEET;

THENCE SOUTH 18°17'40" WEST 203.99 FEET;

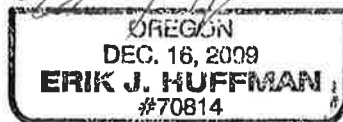
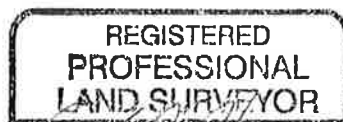
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1965.00 FEET, AN ARC LENGTH OF 298.02 FEET, A TOTAL ANGLE OF 08°41'23", AND A CHORD WHICH BEARS SOUTH 22°38'22" WEST 297.73 FEET;

THENCE SOUTH 26°59'03" WEST 456.39 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1465.00 FEET, AN ARC LENGTH OF 116.71 FEET, A TOTAL ANGLE OF 04°33'52", AND A CHORD WHICH BEARS SOUTH 29°15'59" WEST 116.67 FEET;

THENCE NORTH 89°57'40" WEST 294.72 FEET TO THE POINT OF BEGINNING.

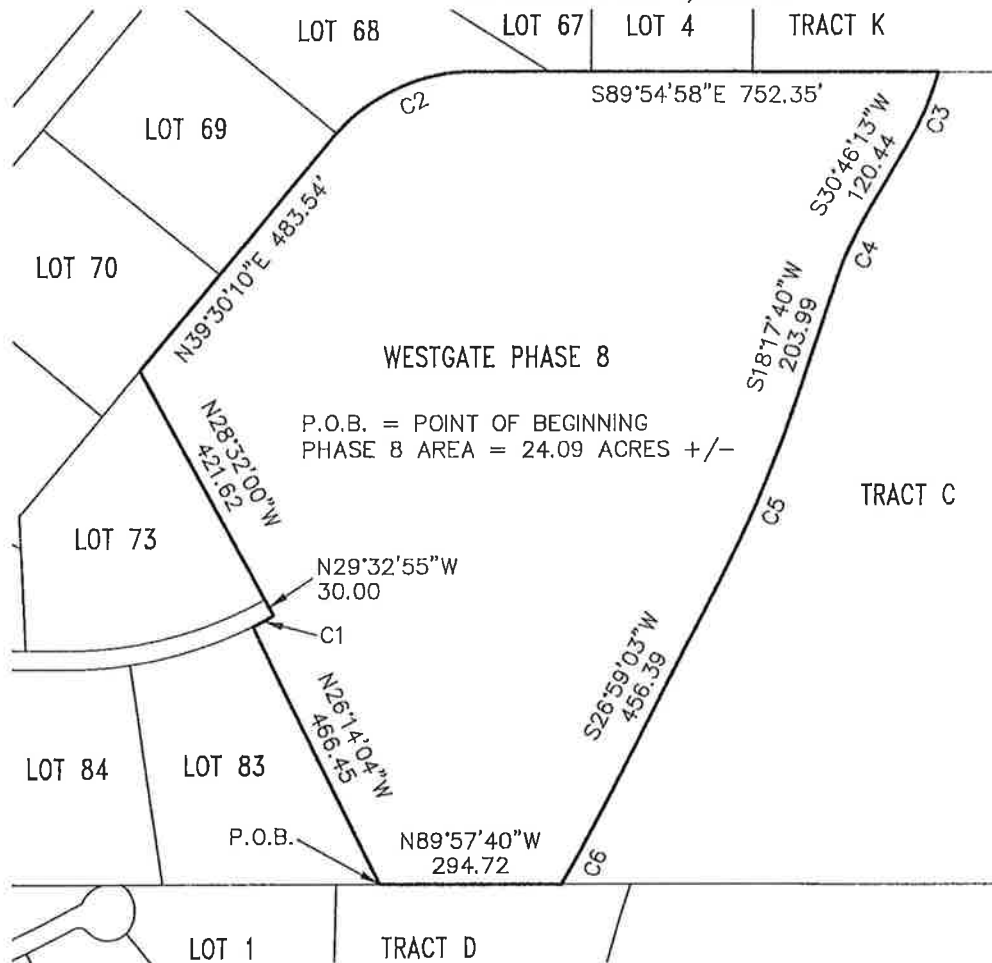
CONTAINS 24.09 ACRES MORE OR LESS.



Renews 6/30/2023

EXHIBIT "B"

LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 35
TOWNSHIP 17 SOUTH, RANGE 11 EAST, WILLAMETTE MERIDIAN
DESCHUTES COUNTY, OREGON



Curve Table					
Curve #	Delta	Radius	Arc	Chord	Chord Bearing
C1	03°18'51"	665.00'	38.47'	38.46'	N62° 06' 30"E
C2	50°34'52"	300.00'	264.84'	256.33'	N64° 47' 36"E
C3	14°22'55"	515.00'	129.27'	128.93'	S23° 34' 46"W
C4	12°28'33"	585.00'	127.38'	127.13'	S24° 31' 57"W
C5	08°41'23"	1965.00'	298.02'	297.73'	S22° 38' 22"W
C6	04°33'52"	1465.00'	116.71'	116.67'	S29° 15' 59"W



BECON
CIVIL ENGINEERING & LAND SURVEYING

549 SW MILL VIEW WAY
SUITE 100
BEND, OREGON 97702
(541) 633-3140
www.beconeng.com

FOR: EMPIRE WESTGATE, LLC
63026 LOWER MEADOW DR
SUITE 200
BEND, OREGON 97701

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Erik J. Huffman
OREGON
DEC. 16, 2009
ERIK J. HUFFMAN
70814

DATE: 03/14/2022 SCALE: 1" = 300' DRAWN BY: EJH PROJ: 13861

RENEWS: JUN. 30, 2023

"EXHIBIT C"

Empire Westgate LLC, Westgate Phase 8, Construction Cost Estimate for Improvement Agreement, Deschutes County
 File No. 247-19-000500-MP and 247-19-000501-TP.

DATE: MARCH 4TH, 2022 CONTRACTOR: SAGE RIDGE, INC. PREPARED BY: ERIK HUFFMAN					
A	Bid Item				
NO.	Description	QTY	UNIT	Cost per Unit	Total Cost
1	Watering	1	LS	\$850.00	\$850.00
2	Excavation & Embankment	300	CY	\$10.00	\$3,000.00
3	6" Agg Base	2000	SY	\$7.00	\$14,000.00
4	2" Asphalt	1950	SY	\$10.00	\$19,500.00
5	8" Water Main	520	LF	\$58.00	\$30,160.00
6	8" Valves	1	EA	\$2,300.00	\$2,300.00
7	8" Bends & Tees	2	EA	\$2,100.00	\$4,200.00
8	6" Water Line	20	LF	\$50.00	\$1,000.00
9	6" Valves	2	EA	\$2,000.00	\$4,000.00
10	1" Water Service	9	EA	\$1,700.00	\$15,300.00
11	Fire Hydrant	2	EA	\$3,800.00	\$7,600.00
12	Utility Trench	630	LF	\$21.00	\$13,230.00
13	Utility Vault	1	EA	\$3,700.00	\$3,700.00
14	4" Conduit	1950	LF	\$3.50	\$6,825.00
15	2" Conduit	1950	LF	\$3.00	\$5,850.00
16	4" Sweeps	4	EA	\$95.00	\$380.00
17	Street Light Bases	1	EA	\$1,200.00	\$1,200.00
18	Drainage Check Dams	6	EA	\$50.00	\$300.00
B	SUBTOTAL:				\$133,395.00
C	20% CONTINGENCY FOR BONDING:				\$26,679.00
D	Total Estimated Project Cost:				\$160,074.00
Notes: Total Estimated Unit Costs determined from Sage Ridge, Inc. contract. Survey Staking costs determined by Becon Engineering contract.					

Mailing Date:
Wednesday, August 28, 2019

HEARING OFFICER DECISION

FILE NUMBERS: 247-19-000500-MP, 247-19-000501-TP

APPLICANT: Empire Construction, Kevin Spencer

OWNER: Rio Lobo Investments, LLC

LAND USE CONSULTANT: Retia Consult, LLC, Tammy Wisco, PE, AICP

PROPOSAL: Applicant requested approval of a Master Plan (MP) and Tentative Plan (TP) for an 85-lot subdivision within the Westside Transect Zone.

STAFF CONTACT: Jacob Ripper, AICP, Senior Planner
Jacob.Ripper@deschutes.org, 541-385-1759

SUMMARY OF DECISION: Approved with conditions

I. STANDARDS AND APPLICABLE CRITERIA:

Deschutes County Code (DCC)

- Title 17, Deschutes County Subdivision and Partition Ordinance
- Chapter 17.12, Administration and Enforcement
- Chapter 17.16, Approval of Subdivision Tentative Plans and Master Development Plans
- Chapter 17.36, Design Standards
- Chapter 17.44, Park Development
- Chapter 17.48, Design and Construction Specifications

- Title 19, Deschutes County Zoning Ordinance of the Bend Urban Area
- Chapter 19.04, Title, Purpose, and Definitions
- Chapter 19.22, Westside Transect Zone (WTZ)
- Chapter 19.80, Off-Street Parking and Loading
- Chapter 19.88, Provisions Applying to Special Use Standards
- Chapter 19.92, Interpretations and Exceptions

Title 22, Deschutes County Development Procedures Ordinance

Oregon Revised Statutes (OAR) Chapter 92, Subdivisions and Partitions

II. BASIC FINDINGS:

LOCATION: The property subject to this decision has an assigned address of 62600 McClain Drive, Bend; and is further identified on County Assessor Tax Map 17-11, as tax lot 6000.

LOT OF RECORD: The property described above was recognized as a legal lot of record pursuant to the Lot of Record Verification file no. LR-05-14. The property described above was subsequently adjusted by a Property Line Adjustment file no. 247-18-000400-LL.

ZONING AND PLAN DESIGNATION: The majority of the property described above and the portion subject to this proposal (the "Subject Property") is primarily within the Westside Transect Zone ("WTZ"). There is an approximately 32-acre portion of the property described above, located in the southeastern region, that is within the Bend Urban Growth Boundary ("UGB") and is zoned Urbanizable Area ("UA"). The portion of the property described above that is within the UGB is not subject to this proposal. The entire property is within the Destination Resort (DR) Combining Zone. The Subject Property is designated as Urban Area Reserve ("UAR") in the Deschutes County Comprehensive Plan.

PROPOSAL: The Applicant requested approval of a Master Plan ("MP") and Tentative Plan ("TP") for an 85-lot subdivision within the Westside Transect Zone. Proposed lots would be approximately 2.5 to 5 acres in size, with no lot being smaller than 2.5 acres. The proposed MP included open space areas and trail connections. Water would be provided from the City of Bend and each lot would have an onsite sewage disposal system. Access would be provided through an extension and connection of McClain Drive and Sage Steppe, which would be a public right-of-way. Other roads within the subdivision are proposed to be private roads. The subdivision is proposed in eight (8) phases, with nine (9) to 14 lots per phase.

SITE DESCRIPTION: The property described above is approximately 335 acres in size, however, as described in the Zoning and Plan Designation section above, this proposal does not include the approximate 32-acre portion of the property that is located within the UGB. Therefore, throughout this Decision, the Subject Property shall refer only to the 303 acres which are subject to this proposal and located outside of the UGB, unless specifically stated otherwise.

Deschutes County Planning Staff ("Staff") performed a site visit in the afternoon of July 9, 2019 when the weather was clear and there was good visibility. The Staff site visit consisted of a drive around the primitive loop driveway that exists on the property. The Subject Property is irregular in shape, see Figure 1 below. Topography varies across the Subject Property with a slope down towards Shevlin Park and Tumalo Creek to the west, both sloped and relatively flat areas in the center, and areas of rocky outcroppings and short cliffs in the southeast and east. Vegetation also varies across the Subject Property, with brush and grasses covering the majority of the property. Pine trees are mostly located in the eastern and northern areas, although there is a run of dispersed pine trees in the central western portion of the property as well. Views of the Cascade Range are to the west.

Figure 1 – Subject Property



SURROUNDING LAND USES: To the west of the Subject Property are lands owned by the Bend Parks and Recreation District (“BPRD”) which include Shevlin Park, Tumalo Creek, and adjacent properties. The Subject Property is surrounded by residential development to the north, east, and south in a range of densities. Larger rural lots in the Tree Farm subdivision are to the south, while relatively smaller urban subdivision lots are in areas to the east and north. Shevlin Park Road is located approximately 0.25 miles to the northeast and Skyliners Road is located approximately 0.7 miles to the south.

LAND USE HISTORY: Previous land use actions associated with the subject property are below.

- MJP-85-3: Major Partition to create three parcels*
- MJP-88-7: Major Partition to create three parcels*
- LR-05-14: Lot of Record Verification for the subject property
- CU-05-17, TP-05-958: Application for a 34-lot PUD subdivision (denied)
- 247-17-000420-LL: Property Line Adjustment (void)
- 247-17-001013-ZC, 1014-PA, 1015-TA: Zone Change, Plan Amendment, and Text Amendment to create the Westside Transect Zone (withdrawn)
- 247-18-000400-LL: Property Line Adjustment

- 247-18-000612-ZC, 613-PA, 614-TA: Zone Change, Plan Amendment, and Text Amendment to create and implement the Westside Transect Zone
- 247-18-000957-PA, 958-ZC: Plan Amendment and Zone Change for minor adjustments of the Bend UGB

*It appears these approvals were never acted upon.

The Subject Property was part of a recently approved Plan Amendment, Text Amendment, and Zone Change proposal to designate certain areas west of the City of Bend as being within the Westside Transect Zone. Ordinance No. 2019-001 enacted the amendments and became effective on April 16, 2019.

NOTICE REQUIREMENT: The Applicant complied with the posted notice requirements of Section 22.23.030(B) of Deschutes County Code (DCC) Title 22. The Applicant submitted a Land Use Action Sign Affidavit dated July 10, 2019, indicating the Applicant posted notice of the land use action on July 7, 2019. A Notice of Application was mailed on June 27, 2019 to surrounding property owners and affected agencies.

PUBLIC COMMENTS: Notice of this application was provided to all property owners within 250 feet of the exterior boundary of the subject property. One public comment in support of the application was received from the legal counsel for the Coats family, who are the owners of the North Transect area. Additional letters were received from two attorneys involved with the proposal to create the WTZ Zone. The letters are regarding the slope setback requirement within DCC 19.22 and are quoted in findings below. Three additional comments were received from the public which addressed trails, roadways, construction traffic, and setbacks. Those topics are addressed in findings below.

PUBLIC AGENCY COMMENTS: The Deschutes County Community Development Planning Division mailed notice to several agencies and received the following comments.

Bend Fire Department. On July 5, 2019, Deputy Chief of Fire Protection Larry Medina responded:

"FIRE APPARATUS ACCESS ROADS:

- ***Approved vehicle access for fire fighting shall be provided to all construction or demolition sites. Vehicle access shall be provided to within 100 feet of temporary or permanent fire department connections. Vehicle access shall be provided by either temporary or permanent roads, capable of supporting vehicle loading under all weather conditions. Vehicle access shall be maintained until permanent access roads are available. 2014 OFC 3310.1. Prior to the issuance of construction permits the applicant shall provide to the City of Bend Fire Department a proposed plan for fire apparatus access to the construction site.***
- ***Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet of all portions of the facility and all portions of the exterior***

walls of the first story of the building as measured by an approved route around the exterior of the building or facility. **2014 OFC 503.1.1 Provide the City of Bend Fire Department a proposed site plan illustrating compliant fire apparatus access.**

- **Fire apparatus roads shall have an unobstructed width of not less than 20 feet**, exclusive of shoulders, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches. Where a fire hydrant is located on a fire apparatus road, the minimum width shall be 26 feet, exclusive of shoulders. Traffic calming along a fire apparatus road shall be approved by the fire code official. Approved signs or other approved notices or markings that include the words NO PARKING-FIRE LANE shall be provided for fire apparatus roads to prohibit parking on both sides of fire lanes 20 to 26 feet wide and on one side of fire lanes more than 26 feet to 32 feet wide. **2014 OFC 503.2.1, D103.1, 503.4.1, 503.3**
- **Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus (60,000 pounds GVW) and shall be surfaced (asphalt, concrete or other approved driving surface) as to provide all weather driving capabilities.** Inside and outside turning radius shall be approved by the fire department. All dead-end turnarounds shall be of an approved design. Bridges and elevated surfaces shall be constructed in accordance with AASHTO HB-17. The maximum grade of fire apparatus access roads shall not exceed 10 percent. Fire apparatus access road gates with electric gate operators shall be listed in accordance with UL325. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200. A Knox® Key Switch shall be installed at all electronic gates. **2014 OFC D102.1, 503.2.4,**
- **Multiple-family residential developments have more than 100 dwellings and one- or two-family residential developments where the dwelling units exceed 30 shall be provided with separate and approved fire apparatus access roads. Provide a site plan to the City of Bend Fire Department illustrating a secondary access point.**

FIRE PROTECTION WATER SUPPLIES:

- **An approved water supply capable of supplying the required fire flow for fire protection shall be provided** to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction.
- Fire flow requirements for buildings or portions of buildings shall be determined by an approved method. **Documentation of the available fire flow shall be provided to the fire code official prior to final approval of the water supply system. Provide the City of Bend Fire Department a fire flow analysis.**
- Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet from a hydrant on a fire apparatus road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official. For Group R-3 and Group U occupancies the distance requirement shall be 600 feet. For buildings equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.3.1.2, the distance requirement shall be 600 feet. Fire hydrants shall be provided along required fire apparatus roads and adjacent public streets. The minimum number of fire hydrants shall not be less than that listed in table C105.1 of the 2010 OFC. Existing fire hydrants on public streets are allowed to be considered as available. Existing fire hydrants on adjacent

properties shall not be considered available unless fire apparatus access roads extend between properties and easements are established to prevent obstruction of such roads. The average spacing between fire hydrants shall not exceed that listed in table C105.1 of the 2010 OFC. **Provide the City of Bend Fire Department a site plan illustrating the quantity and locations of fire hydrants.**

- ORS 811.550(16) prohibits parking within 10 feet of a fire hydrant. Provide approved signs or other approved markings to prohibit parking within 10 feet of a fire hydrant. ORS 860-024-0010 limits the placement of a fire hydrant a minimum of 4 feet from any supporting structure for electrical equipment, such as transformers and poles. Maintain a minimum 4 foot clearance of fire hydrants to any supporting structure for electrical equipment. Where fire hydrants are subject to impact by a motor vehicle, guard posts or other approved means shall comply with Section 312 of the 2010 OFC. **Provide a site plan that illustrates any parking restrictions.**

OTHER FIRE SERVICE FEATURES:

- ***New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall be Arabic numbers or alphabetical letters. Numbers shall be a minimum 4 inches high with a minimum stroke width of 0.5 inch. Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole, or other sign or means shall be used to identify the structure. Address numbers shall be visible under low light conditions and evening hours. Provide illumination to address numbers to provide visibility under all conditions. Address signs are available through the Deschutes Rural Fire Protection District #2. An address sign application can be obtained from the City of Bend Fire Department website or by calling 541-388-6309 during normal business hours.***
- ***A KNOX-BOX® key vault is required for all newly constructed commercial buildings, facilities or premises to allow for rapid entry for emergency crews. A KNOX® Key Switch shall be provided for all electrically operated gates restricting entry on a fire apparatus access road. A KNOX® Padlock shall be provided for all manually operated gates restricting entry on a fire apparatus road and security gates restricting access to buildings.***

Deschutes County 9-1-1 Service District. On July 9, 2019, GIS Analyst Evan Clark responded:

"The Deschutes County 9-1-1 Service District would like to submit its concern for the street names displayed on the site plan. At the southern end of the subdivision McClain Dr transitions into the existing Sage Steppe Dr from the adjacent Tree Farm subdivision. The site plan doesn't make it clear where McClain Dr will end and Sage Steppe Dr will begin.

9-1-1 would like to request that McClain Dr end at the intersection with Road 'D' and Road 'A'. At this intersection, Sage Steppe Dr would begin and continue south to the existing blocks in the Tree Farm subdivision. This request is to avoid any potential addressing conflicts that could result in the delayed response of emergency services. If this is agreed upon, we would ask that this is made clear on the site plan and annotated correctly on the subdivision plat."

Deschutes County Building Division. On June 27, 2019, Building Official Randy Scheid responded:

"NOTICE: The Deschutes County Building Safety Divisions code mandates that Access, Egress, Setbacks, Fire & Life Safety, Fire Fighting Water Supplies, etc. must be specifically addressed during the appropriate plan review process with regard to any proposed structures and occupancies.

Accordingly, all Building Code required items will be addressed, when a specific structure, occupancy, and type of construction is proposed and submitted for plan review."

Deschutes County Community Development Department, Property Address Coordinator. On June 28, 2019, Property Address Coordinator Tracy Griffin responded:

"Addresses to be determined when road names are assigned."

Deschutes County Planning Division, Senior Transportation Planner. On July 12, 2019, Senior Transportation Planner Peter Russell responded:

"I have reviewed the transmittal materials for 247-19-000500-MP/501-TP for an 85-unit subdivision on 335 acres within the Westside Transect Zone (WTZ) at 62600 McClain Drive, aka County Assessor Tax Map 17-11, Tax Lot 6000.

The applicant has submitted a traffic study dated June 18, 2019, which demonstrates the current proposal is consistent with the traffic analysis done for the larger plan amendment/zone change approved under 247-18-612-ZC/613-PA/614-TA for the entire 737 acres. The mitigations required for that change from Urban Area Reserve (UAR-10) to WTZ were resolved in that 2018 decision. The current proposal does not result in any additional deficiencies in the roadway system.

Deschutes County Code 17.48.050 and its Table A sets a paved width of 20' or 28' for private roads; for a 20' foot private road multiuse paths are required for narrower width. DCC 17.48.140(B)(2) states multiuse paths have a standard width of 10' and 12' feet if the multiuse path will be subject to high volumes of multiple users. The applicant is proposing a 24' width for the private roads, but apparently only for the short sections which lead to natural trails; the remaining portions of private roads will be 20' with no multiuse path. Staff is uncertain if the code allows this hybrid. The applicant posits this is consistent to what the County approved in the adjacent Miller Tree Farm under 247-14-000243-TP.

The proposed collector, an extension of McClain Drive to Sage Steppe, will be a public road, and also have an 8' multiuse path based on anticipated low volumes of usage and the road's low speed. While staff can understand the rationale for the reduced width on a private road that will see little to no through traffic, staff does not support similar reduced widths for a north-south collector that ultimately will provide a critical link between Johnson Road/Shevlin Park Road to the north and Skyliners Road and Century Drive, aka Cascade Lakes Highway, to the south.

Board Resolution 2013-020 sets a transportation system development charge (SDC) of \$4,448 per p.m. peak hour trip. County staff has determined a local trip rate of 0.81 p.m. peak hour trips per single-family dwelling unit; therefore the applicable SDC is \$3,603 (\$4,448 X 0.81) per residence.

The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final."

Deschutes County Road Department.

On July 23, 2019 Cody Smith, County Engineer for the Deschutes County Road Department submitted the following comments:

"I have reviewed the application materials submitted to date for the above-referenced file numbers, proposing an 85-lot subdivision within the Westside Transect Zone on County Assessor's Tax Map 17-11, Tax Lot 6000. The subject property is accessed by Sage Steppe Dr and McClain Dr. Road Department records indicate that these roads have the following attributes where they abut the subject property:

Sage Steppe Dr

- Road Status - Local Access Road (Public, Not County Maintained)
- Surface Type - Asphalt Concrete
- Surface Width - 26 ft.
- Functional Classification - Rural Local
- Right of Way Width - 60 ft.
- Right of Way Instrument - Tree Farm Subdivision Plat (2016-44585)

McClain Dr

- Road Status - City of Bend Road
- Surface Type - Asphalt Concrete
- Surface Width - 28 ft.
- Functional Classification - City Local

The applicant has proposed an interior private road system connecting to an interior public road that would be an extension of McClain Dr to Sage Steppe Dr for the proposed subdivision. Road Department anticipates that the extension of McClain Dr to Sage Steppe Dr, which is proposed with a paved width of 28 ft. and an 8-ft. wide multiuse path, will become a County collector road upon connecting Sage Steppe Dr to NW Crosby Dr or Skyliners Rd towards the south. The applicant has proposed 24-ft. wide paved private roads with no adjacent multi use paths for all other internal roads. The application states that the applicant coordinated with the County Road Department regarding the roadway cross-sections. It should be noted that while the applicant did coordinate their conceptual plans with the Road Department, Road Department staff did not indicate any acceptance of deviation from the private road standards in Deschutes County Code (DCC) 17.48.180 and 17.48A. Rather, Road Department staff stated to the applicant prior to application submission that they would need to provide justification or mitigation for a variance to the County private road standard in their application burden of proof. Road Department staff acknowledges that the applicant has provided a reason for the variance in their burden of proof, but Road Department is neutral as to whether or not the applicant has provided a sufficient reason.

Deschutes County Road Department requests that approval of the proposed subdivision be subject to the following conditions:

Prior to construction of public and private road improvements:

- Applicant shall submit road improvement plans to Road Department for approval prior to commencement of construction pursuant to DCC 17.40.020 and 17.48.060. The roads shall be designed to the minimum standard for a private road pursuant to 17.48.160, 17.48.180, and 17.48A or pursuant to the master plan upon approval. Road improvement plans shall be prepared in accordance with all applicable sections of DCC 17.48.

Prior to final plat approval by Road Department:

- Applicant shall complete road improvements according to the approved plans and all applicable sections of DCC 17.48. Improvements shall be constructed under the inspection of a registered professional engineer consistent with ORS 92.097 and DCC 17.40.040. Upon completion of road improvements, applicant shall provide a letter from the engineer certifying that the improvements were constructed in accordance with the approved plans and all applicable sections of DCC 17.48.
- Maintenance of all public and private roads, including multiuse paths, shall be assigned to a home owners association by covenant pursuant to DCC 17.16.040, 17.16.105, 17.48.160(A), and 17.48.180(E). Applicant shall submit covenant to Road Department for review and shall record covenant with the County Clerk upon Road Department approval. A copy of the recorded covenant shall be submitted to the Community Development Department prior to final plat approval.
- All easements of record or existing rights of way shall be noted on the final plat pursuant to DCC 17.24.060(E),(F), and (H).
- The surveyor preparing the plat shall, on behalf of Applicant, submit information showing the location of the existing roads in relationship to the rights of way to Deschutes County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights of way. In no case shall a road improvement be located outside of a dedicated road right of way. If research reveals that inadequate right of way exists or that the existing roadway is outside of the legally established or dedicated right of way, additional right of way will be dedicated as directed by Deschutes County Road Department to meet the applicable requirements of DCC Title 17 or other County road standards. This condition is pursuant to DCC 17.24.060(E),(F), and (G) and 17.24.070(E)(8).
- Applicant shall submit as-constructed improvement plans to Road Department pursuant to DCC 17.24.070(E)(1).
- Applicant shall submit plat to Road Department for approval pursuant to DCC 17.24.060(R)(2), 100, 110, and 140.

Prior to issuance of any building permits:

- Applicant shall obtain driveway access permits for any driveway accesses to the new public road connection between McClain Dr and Sage Steppe Dr pursuant to DCC 12.28.050 and 17.48.210(A)."

The following agencies did not respond: Bend Metro Parks & Recreation District, City of Bend Growth Management Department, City of Bend Planning Division, City of Bend Public Works Department, Cascade Natural Gas Company, CenturyLink, Deschutes County Assessor, Deschutes County Environmental Soils Division, Deschutes County Sheriff, Deschutes County Surveyor, Pacific Power, and Watermaster – District 11.

REVIEW PERIOD: The application was submitted on June 19, 2019. It was accepted and deemed complete on July 18, 2019. The 150th-day on which the County must take final action on this application is December 15, 2019.

III. FINDINGS & CONCLUSIONS:

PRELIMINARY HEARINGS OFFICER COMMENTS:

At the start of the July 25, 2019 public hearing (the “Hearing”) the Hearings Officer requested the Deschutes County Staff, the Applicant and/or Applicant’s representatives and any other interested person to address various issues. Those issues included:

- Are “lot area” measurements/sizes provided by Applicant “gross” or “net.” Restated, are Applicant’s proposed lot measurements/sizes inclusive of roads, streets, rights of way or easements of access to other property? (See DCC 19.22.050(A) and DCC 19.04.040)
- What is the proper interpretation of DCC 19.22.050(H)? Applicant and supporters of the Application suggested DCC 19.22.050(H) was intended to provide a minimum setback requirement from the “Rim of the Tumalo Creek Canyon,” and was not intended to create a 30-foot building setback from every topographical feature within the Westside Transect Zone (“WTZ”) where slopes exceed the 20% requirement.” (See July 12, 2019 letter from Tia Lewis).
- Address all issues raised in the July 24, 2019 “Staff Memorandum.”

The Hearings Officer reviewed the testimony offered at the Hearing and documents contained in the record of this case. The Hearings Officer, based upon his review of the record, found no person responded to the “lot area” information request. The Hearings Officer, based upon the findings below, determined that there was insufficient evidence in the record to reach a defensible position to conclude that Applicant’s proposed “lot area” was either “net” or “gross.”

The Hearings Officer, based upon a review of the evidence in the record, concluded that issues (excepting the “lot area” issue) raised above by the Hearings Officer were addressed during Hearing testimony or record submissions.

The Hearings Officer, at the conclusion of the Hearing, commended the Applicant’s public involvement process. The Hearings Officer commented that the Application in this case appeared to have been a result of a collaborative effort of persons/entities with a history of different

perspectives of what constitutes "good planning." To that end the Hearings Officer would like to have agreed, in all instances, with Applicant's requests. However, the Hearings Officer is obligated to "follow the law" by considering the evidence "in the record" in the context of relevant approval criteria.

TITLE 19 OF THE DESCHUTES COUNTY CODE, DESCHUTES COUNTY ZONING ORDINANCE OF THE BEND URBAN AREA:

Chapter 19.22, Westside Transect Zone – WTZ

Section 19.22.020. Permitted Uses.

The following uses and their accessory uses are permitted outright:

- A. Single-family dwelling.**
- B. Home occupation subject to DCC 19.88.140.**
- C. Other accessory uses and accessory buildings and structures customarily appurtenant to a permitted use subject to DCC 19.92.020.**

Section 19.22.030. Conditional Uses.

The following uses and their accessory uses may be permitted subject to site plan review and a conditional use permit as provided in DCC 19.76, 19.88, and 19.100:

- A. Public, parochial and private schools, including nursery schools, kindergartens and day nurseries; but not including business, dancing, trade, technical or similar schools subject to DCC 19.88.160.**
- B. Parks and recreation facilities, community buildings and fire stations; but not including storage or repair yards, warehouses or similar uses.**
- C. Utility facility, including wireless telecommunications facilities, subject to DCC 19.88.120.**
- D. Churches.**

FINDING: The Applicant proposed an 85-lot subdivision for residential and accessory uses only. No specific development beyond the division of land and the associated transportation and utility improvements are proposed at this time. Uses in the future will be subject to DCC 19.22 and any other applicable title/chapter of the DCC.

Section 19.22.040. Height Regulations.

No building or structure shall be hereafter erected, enlarged or structurally altered to exceed 30 feet in height, except for schools which shall not exceed 45 feet in height.

FINDING: No structures are being proposed as part of this application. However, Staff recommended, in the Staff Report, the following condition of approval is included to ensure ongoing compliance with this criterion.

Building Height: Prior to the issuance of building permits for individual lots, no building or structure shall be hereafter erected, enlarged or structurally altered to exceed 30 feet in height, except for schools which shall not exceed 45 feet in height.

The Hearings Officer finds that with Staff's recommended condition this approval criterion can be met.

Section 19.22. 050. Lot Requirements.

The following requirements shall be observed:

A. Lot Area. Each lot shall have a minimum of 2.5 acres.

FINDING: Applicant's proposal includes lots ranging in size from 2.5 acres to 5.0 acres. Staff, in the Staff Report (page 9 of 65), stated "it is unclear if these lot area measurements are net lot area or gross lot area." DCC 19.04.040 provides the following definition:

"Lot area' means the total horizontal area contained within the lot lines; said area shall be computed as gross area for lots larger than 2.5 acres and net area for lots 2.5 and smaller. The total horizontal net area within lot lines of a lot is that square footage of a lot that is free from roads, streets, rights of way or easements of access to other property. The Planning Director shall include in gross lot areas all streets, roads and easements of access to other property that would accrue to that lot if the road, street or easement were vacated, and shall treat the gross areas of lots that have never been previously described of record as other than fractions of a section as if the section contained 640 acres, in cases where a lot is sought to be partitioned."

Several lots are listed as being exactly 2.50 acres while others are larger. It is unclear if the Applicant included streets and easements in the calculations for the 2.50-acre lots (which would not be allowable).

In addition to the portion of the Subject Property within the WTZ Zone, there is an approximately 32-acre portion of the overall property within the UGB in the UA Zone. Under the Bend Development Code this portion of the property is subject to a minimum lot size of 20 acres (BCD 2.8.300, Lot Area and Dimensions). Pursuant to the definition of "Lot of Record" in DCC 19.04.040, a remainder lot of record can be created by, "the subdividing or partitioning of adjacent or surround land, leaving a remainder lot or parcel". Staff noted that at the completion of platting all proposed phases, this remainder lot will be approximately 32 acres in size and will be above the minimum lot size for the UA Zone, assuming it is not further divided in that time period.

The Hearings Officer concurs with Staff's "lot size" concerns. The Hearings Officer, as noted in the Preliminary Comment section of this decision and earlier in these findings, found Applicant did not provide any additional evidence following the issuance of the Staff Report that clearly and directly addressed Staff's "lot size" concerns. The Hearings Officer finds with a condition requiring Applicant, prior to final plat approval for each phase, to meet the requirement of DCC 19.22.050 (in the context of DCC 19.04.040) this approval criterion can be met.

B. Lot Width. Each lot shall be a minimum width of 125 feet.

FINDING: DCC 19.04.040 provides the following definition for “lot width”:

“Lot width” means the horizontal distance between the side lot lines measured within the lot boundaries or the mean distance between the side lot lines within the buildable area. In the case of a corner lot, lot width shall mean the mean horizontal distance between the longest front lot line and the opposite lot line not abutting the street.

Lots 33, 37, and 77 are proposed as “flag lots” with a narrow access strip leading from the road to a larger area to the rear of the lot where development is intended. This “pole” part of a flag lot is not considered buildable area as a structure would not meet minimum setbacks in this area of the lot. Lots 33, 37, and 77 all have lot widths in excess of 300 feet. All lots within the proposed subdivision exceed the minimum width of 125 feet. The Hearings Officer finds this approval criterion will be met.

- C. Front Yard. The front yard shall be a minimum of 40 feet.**
- D. Side Yard. There shall be a minimum side yard of 30 feet.**
- E. Rear Yard. There shall be a minimum rear yard of 30 feet.**
- F. Solar Setback. The solar setback shall be as prescribed in DCC 19.88.210.**
- G. Park Setback. The setback from Shevlin Park shall be a minimum of 100 feet.**

FINDING: Shevlin Ridge residents Steven L Wallaert and Pam Robbins (“Wallaert & Robbins”), in a July 18, 2019 email, expressed concerns related to setbacks on the eastern edge of the proposed development. Wallaert & Robbins requested, in their email, assurances that a 50-foot setback (not the minimum DCC required 30-foot setback), are part of any approval of Applicant’s proposal.

Applicant, in July 16, 2019 supplemental submission, stated the following:

“Lots 60 to 67 will include a 50-foot setback along their eastern property line, greater than required by County code. This increased setback will be provided to create a larger buffer area between Westgate and the adjacent urban neighborhood to the east. These setbacks are shown on the plans submitted with this memo, dated 7/12/19.”

Tammy Wisco (“Wisco”), the Applicant’s planning representative, testified at the Hearings that there would be a 50-foot setback along the eastern boundary adjacent to Shevlin Ridge. Further, Wisco, included a Power Point presentation slide (Slide 7) as part of her Hearing testimony. Slide 7 is a map showing the eastern edge of the proposed development and a 50-foot setback adjacent to Shevlin Ridge. The Hearings Officer finds, based upon the above-quoted statement by Applicant, Wisco’s testimony and Power Point Slide 7, that Wallaert & Robbins concerns have been adequately addressed by Applicant. The Hearings Officer further notes that the 50-foot proposed setback, along Shevlin Ridge, exceeds the setback required by the DCC.

Staff noted, in the Staff Report, that the No Build Line and the Conservation Area (Tract B) along the

western portion of the subdivision would guarantee that the park setback of subsection (G) above will be met. Staff, in the Staff Report, also noted that even though no structures were proposed at this time, Staff was recommending the following condition of approval to ensure ongoing compliance with these criteria:

Setback and Yard Requirements: **As an ongoing condition of approval**, the subdivision lots shall observe the applicable setback and yard requirements of DCC 19.22.050(C)-(G).

The Hearings Officer finds that with Staff's recommended condition of approval these approval criteria can be met.

H. Slope Setback. There shall be a minimum setback of 30 feet from the edge of any slope which exceeds 20%.

FINDING: This section of the DCC generated a number of comments from supporters of Applicant's proposal (Tia Lewis letter dated July 12, 2019, Myles Conway letter dated July 16, 2019, Paul Dewey letter dated July 23, 2019, and Myles Conway final argument dated July 30, 2019). The issue raised in these letters can best be summarized by Conway's conclusion statement in his July 16, 2019 letter which states:

"In sum, the Slope Setback requirement contained in DCC 19.22.050 (H) was intended to create a setback from the canyon rim. It was not intended to create a 30-foot building setback from every topographical feature within the South Transect property that exceeds the 20 percent requirement."

The Hearings Officer takes notice that the Subject Property contains areas that are "sloped." The Hearings Officer also takes notice that Tumalo Creek Canyon is located in the western portion of the Subject Property and that Shevlin Park and Tumalo Creek are located to the west of the Subject Property. The Hearings Officer also takes notice that views up to the Subject Property from Shevlin Park and fire protection/mitigation were very important considerations in the comprehensive plan/zone change process leading the approval of the Westside Transect zone code language.

Applicant, in its burden of proof, stated:

"This requirement [DCC 19.22.050 H] was adopted through the Westside Transect Zone text amendment (247-18-000614-TA), which became effective April 16, 2019. The intent of this requirement was to mitigate wildfire spread through Tumalo Canyon, based on the Singletree Wildfire Mitigation and Forest Health Plan (Exhibit C). In this report, Mr. Jackson notes:

'Drainages with significant canyons such as Tumalo Creek typically can vector wind patterns away from prevailing free-air wind flow...accelerated rates of fire spread from canyon-bottom ignitions should be expected. Consequently, structures should be located well-away from the mouth at the top of side drainages and well setback from rim-rock edge and/or above steep slopes above drainages and canyon walls.'

The WTZ code was written vaguely, as it was understood that structures would be much further back than 30' from Tumalo Canyon, thereby not needing significant detail on the application of the requirement. Additionally, the code was written prior to having topographical data for the South Transect and was not intended to apply to other slopes on individual lots, separate from Tumalo Canyon and Shevlin Park.

The Applicant has interviewed numerous individuals involved in the text amendment regarding the slope setback requirement of DCC 19.22.050(H), and all confirmed that the intent of this requirement was to address the wildfire spread risk through Tumalo Canyon, and not to require setbacks from all steep slopes existing on an individual lot. Several individuals have noted their willingness to provide testimony to this regard.

The proposed subdivision provides significant structure setbacks from the Tumalo Canyon, far greater than required by this criterion. The western property line of Westgate follows a ridgeline, although it is not the main Tumalo Canyon ridge. As shown on the tentative plan, the proposed development includes an approximately 450-foot setback from the western property line abutting Shevlin Park and the Tumalo Canyon area, well in compliance with the intent of this criterion."

On July 15, 2019, Tia M. Lewis of Schwabe Williamson & Wyatt submitted a letter in support of the proposal and addressed the topic of slope setbacks. The letter states:

"Our office represents the Coats family as owners of the The [sic] North Transect area. We are writing with respect to the Slope Setback requirement for the Westside Transect Zone properties as referenced in DCC 19.22.050 and in support of the above-referenced application. As you are aware, our office worked with County Planning and the present applicants to draft and process the Comprehensive Plan amendments, goal exceptions, zone change and text amendments that gave rise to the approval of the Westside Transect Zone- WTZ (DCC Chapter 19.22). This letter is intended to provide our support for the present applicant's testimony and evidence to clarify the intent of all parties with respect to the Slope Setback requirement contained in DCC 19.22.050(H).

The WTZ provides for a 30-foot minimum setback requirement from the edge of a slope that exceeds 20%. This requirement was specifically intended to provide a minimum setback requirement from the rim of the Tumalo Creek canyon. The purpose of this setback requirement was to provide additional protection from the spread of wildfire and to protect existing viewsheds from the adjacent Shevlin Park and Tumalo Creek as described in the Wildlife Mitigation and Forest Health Plans for the Transect properties.

We agree with the testimony and evidence the present applicant has submitted establishing the Slope Setback requirement contained in DCC 19.22.050(H) was intended to create a setback from the canyon rim and was not intended to create a 30-foot building setback from every topographical feature within the Transect properties that exceeds the 20% requirement.

Thank you for the opportunity to provide this comment. Please let us know if any additional supporting material is required."

On July 16, 2019, Miles A. Conway of Marten Law submitted a letter that was also in support of the proposal and addressed the topic of slope setbacks. The letter states:

"We are writing with respect to the Slope Setback requirement for the Westside Transect Zone properties as referenced in DCC 19.22.050. As you are aware, our office worked with County Planning and the owners of the Coats property (North Transect) to draft and process the Comprehensive Plan amendments, goal exceptions, zone change, and text amendments that gave rise to the approval of the Westside Transect Zone "WTZ"- (DCC Chapter 19.22). This letter is intended to clarify the intent of all parties with respect to the Slope Setback requirement contained in DCC 19.22.050(H).

The WTZ provides for a 30-foot minimum setback requirement from the edge of a slope that exceeds 20 percent. This requirement is specifically intended to provide a minimum setback requirement from the rim of the Tumalo Creek Canyon. The purpose of this setback requirement is to provide additional protection from the spread of wildfire and to protect existing viewsheds from the adjacent Shevlin Park and Tumalo Creek. The Singletree Wildfire Mitigation and Forest Health Plan (attached as Exhibit C to County file 247-18-000614-TA) provides as follows:

'Drainages with significant canyons such as Tumalo Creek typically can vector wind patterns away from prevailing free-air wind flow...accelerated rates of fire spread from canyon-bottom ignitions should be expected. Consequently, structures should be located well away from the mouth at the top side drainages and well setback from rim-rock edge and/or steep slopes above drainages and canyon walls.'

The minimum slope setback requirement was intended to provide an additional degree of protection from fires emanating on forest lands to the west, consistent with the requirements of our fire plan and the applicable National Fire Protection Association standards.

In addition to fire concerns, the slope setback requirement was implemented as part of a comprehensive measures that will protect existing viewsheds from Tumalo Creek. As noted in testimony before the Hearings Officer and County Board, the rim of the Tumalo Creek Canyon is a prominent physical feature when viewed from the trails and public areas within Shevlin Park. The applicable slope setback was incorporated to insure planned home site locations would be setback from the rim of Tumalo Creek. For the South Transect property, the applicant also incorporated both a "Conservation Area" and "No-build Area" that create a more significant buffer between planned homesites and the canyon rim. These requirements result in a minimum of 450-feet of setback from the canyon rim (See Westgate Master Plan Development plans, submitted with the Applicant's Land Use Narrative).

In sum, the Slope Setback requirement contained in DCC 19.22.050(H) was intended to create a setback from the canyon rim. It was not intended to create a 30-foot building setback from every topographical feature within the South Transect property that exceeds the 20 percent requirement.

Thank you for the opportunity to provide this comment. Please let us know if any additional supporting material is required."

Paul Dewey, Executive Director of Central Oregon Landwatch, also provided comments related to DCC 19.22.050 H. Dewey, in his July 23, 2019 letter, stated:

"During the development of the Westside Transect Zone code, this slope setback was intended to provide a setback requirement from the Tumalo Creek Canyon rim, to provide wildfire mitigation from forestlands to the west, in response to the Singletree Wildlife Mitigation and Forest Health Plan. This requirement was not intended to be applied on a lot-by-lot basis in the Westside Transect Zone to other features with slopes over 20%.

The slope setback requirement for the Westside Transect Zone was also intended to protect the viewsheds from Tumalo Canyon and Shevlin Park, through ensuring ample setbacks of home sites from the Tumalo Canyon rim. The proposed Westgate master plan and tentative plan comply with the code by including significantly greater setbacks from the rim.

In summary, the slope setback requirement of DCC 19.22.050(H) was not intended to be applied on an individual lot basis to all features with slopes greater than 20 percent, but rather, was intended to apply to the Tumalo Canyon rim along the south side of Shevlin Park and Tumalo Creek."

Conway, in Applicant's July 30, 2019 "final argument," provided additional argument in support of Applicant's interpretation of DCC 19.22.050 H. Conway stated, in his "final argument" the following:

"The applicant offers the following as its final argument under ORD 197.763.(6)(e) with respect to the "Slope Setback" requirement set forth in DCC19.22.050(H). This provision requires a minimum 30-foot setback 'from the edge of any slope which exceeds 20%.'

The term 'slope' is not defined in either DCC Chapter 19 or DCC Chapter 18. As a result, the Hearings Officer must interpret what the term 'slope' means in the context of DCC 19.22.050(H).

Under PGE v. Bureau of Labor and Industries, 217 Or. 606 (1993) and its progeny, the fundamental task in interpreting an ordinance is to determine the legislative intent. Here, the Hearings Officer must first examine the text and context of DCC 19.22.050 (H). Under State v. Gaines, 346 Or. 160 (2009), the Hearings Officer may resort to any proffered legislative history to determine the intent of the drafters, while applying relevant rules of statutory construction.

First, what is a 'slope'? Because the term is not defined by the code, the Hearings Officer should apply the standard dictionary definition: Slope 'ground that forms a natural or artificial incline; upward or downward slant or inclination or degree of slant; the tangent of the angle made by a straight line with the x-axis.' Dictionary by Merriam-Webster.

Applying these definitions, there is still ambiguity because, as our testimony revealed, there could be 'slopes' greater than 20% in multiple places in a single lot depending on the distance measured between the two points. There are 20% slope where there are small depressions or other small natural features such as boulders. One maxim of statutory construction is to avoid an 'absurd'

result. Applying 'slope' to short distances would lead to the absurd result that setbacks could be measured from rocks, boulders or other measured feature.

Turning to the legislative history, the 20% slope setback was imposed specifically to address wildlife hazards threatening the subject property from the west during fire season. Under PGE and Gaines, the intent of the County Commissioners in adopting this setback was to place homes away from steep canyon slopes to avoid wildfire hazards. Consequently, an appropriate interpretation under PGE and Gaines, is that the setbacks should be measured only from Tumalo Creek canyon slopes exceeding 20%.

If the Hearings Officer is unable to limit application of the setback to Tumalo Creek canyon slopes, the applicant requests that the Hearings Officer approve the Westgate Master Plan and Tentative Plan with an ongoing condition of approval that all buildings observe the 30-foot setback imposed by DCC 19.22.050(H). This condition would demonstrate compliance with the setback requirement and would permit the applicant to seek a formal code interpretation, modify the code or resolve the issue at the building permit stage without the need to amend the Master Plan/Tentative Plan."

Staff, in the Staff Report, stated that Applicant had not provided (prior to the issuance of the Staff Report) any transcripts or minutes from the WTZ text amendment proceedings to support the Applicant's interpretation of DCC 19.22.050(H). Staff, in the Staff Report, opined that the Applicant's argument was plausible and likely accurate. However, Staff requested that the Hearings Officer make a determination as to whether the setback from slopes exceeding 20% applies throughout the entire WTZ or only within the western portions closest to Tumalo Creek and Shevlin Park. Additionally, Staff, in the Staff Report, also requested that the Hearings Officer determine if the "edge of any slope" refers to both the top and bottom "edges" or only to the top "edge".

The Hearings Officer first reminds readers of this decision that the Hearings Officer in this case is the same Hearings Officer that presided over the initial hearing related to the comprehensive plan change, zone change and zoning code text amendment (creating the WTZ) for the Westside Transect area. The Hearings Officer clearly recalls expert testimony from the Applicant's fire consultant related to wildfire mitigation measures; why they were necessary and how the Applicant's proposal supported fire safety. The Hearings Officer agrees, at the earlier Hearings Officer level of review, that wildfire mitigation measures were a primary focus of the WTZ.

The Hearings Officer finds that the Hearings Officer's recommendation to the Deschutes County Board of Commissioners (the "Board"), in the earlier comprehensive plan change, zone change and zoning code text amendment for the Westside Transect area is relevant "legislative history." Further, the Hearings Officer finds any comments, responses or statements made by members of the Board constitutes relevant "legislative history." The Hearings Officer finds that the recollections of participants in the earlier process, expressed in letters to the Hearings Officer in this case, do not constitute persuasive "legislative history."

The Hearings Officer also reminds reader of this decision that the WTZ text amendment recommendation by the Hearings Officer was required to be reviewed and ultimately approved by the Board. The Hearings Officer did not observe or otherwise participate in the Board's review of

the Hearings Officer's WTZ text amendment recommendation. The only evidence that would be persuasive to this Hearings Officer would be on-the-record comments, responses or statements made by the Board that related to DCC 19.22.050(H).

The Hearings Officer finds that Staff (in the Staff Report) and the Hearings Officer (in opening comments at the Hearing) requested Applicant (or any other interested person/entity) to fill in the 'legislative history' gaps related to DCC 19.22.050(H). The Hearings Officer finds, excepting for references to fire mitigation measures mentioned above, that no evidence of legislative history of DCC 19.22.050(H) is in the evidentiary record.

The Hearings Officer finds that DCC 19.22.050 is titled "Lot Requirements." Dewey's statement that DCC 19.22.050(H) "was not intended to be applied on a lot-by-lot basis in the Westside Transect Zone to other features with slopes over 20 percent" is simply contrary to the clear and unambiguous language of DCC 19.22.050. The Hearings Officer finds DCC 19.22.050, including DCC 19.22.050(H), apply to all lots in the WTZ and not to any particular subset of lots.

Tia Lewis, Myles Conway and Paul Dewey all, in letters which are part of the record of this case, assert that DCC 19.22.050(H) was "intended" to apply only to the Tumalo Canyon rim as a wildfire and view mitigation measure. The Hearings Officer finds that the testimony/letters, in this case, from Lewis, Conway and Dewey do not constitute persuasive 'legislative history' related to the enactment of DCC 19.22.050(H). While the Hearings Officer acknowledges that Lewis, Conway and Dewey were each involved in legislative process resulting in the enactment of DCC 19.22.050(H) their comments alone, in this case, are not persuasive evidence that DCC 19.22.050(H) should be interpreted to mean "slope" refers only to the Tumalo Canyon rim and not to all lots within the Applicant's proposed land division.

The Hearings Officer next addresses Myles Conway's "final argument" that the "setback slope" referred to in DCC 19.22.050(H). is (1) ambiguous and (2) should be interpreted to mean "setbacks should be measured only from Tumalo Creek Canyon slopes exceeding 20%." The Hearings Officer, for the purposes of this section of the findings, assumes that the term "slope" is ambiguous. This assumption is made despite reservations by the Hearings Officer based upon the fact that the term "slope" has a clear and concise dictionary definition (see Myles Conway "final argument" dated July 30, 2019). Conway, in the "final argument" stated that "slope" could be considered ambiguous because (1) the slope could vary depending upon the distance measured between two points and, (2) boulders or other natural features could distort result in a "slope" greater than 20%.

The Hearings Officer, for this purpose of discussion of the findings for DCC 19.22.050(H), agrees with Conway that the "slope" of a specific geographical area could be determined by the "distance measured between two points" and even possibly by the existence of "boulders" or other "natural features." However, these arguments presented by Conway do not support Applicant's contention that "slope" (as used in DCC 19.22.050(H)) should be interpreted to **include** or **reference only** the Tumalo Canyon Rim and **not include** other locations where the "slope exceeds 20%."

The Hearings Officer finds, based upon experience in prior land use hearings, that civil engineers and surveyors utilize standard protocols in determining "slope." No interested person, in the record of this case, referenced engineering standards or protocols in the context of measuring "slope." The Hearings Officer, based upon the lack of evidence or argument, finds that until challenged the measurement of "slope" is an engineering matter and not one to be interpreted by a Hearings Officer. If, on the oft chance, there would be a dispute between expert engineers as to the meaning of "slope" a hearings officer or the Board would correctly be forced to address that issue.

Finally, the Hearings Officer notes that DCC 19.22.050(H) states that a 30-foot setback is required "from the edge of any slope which exceeds 20%." The language of DCC 19.22.050(H) clearly does not state 30-foot setbacks required from the Tumalo Canyon rim or any other specific "slope." The Hearings Officer finds the use of the words "any slope" do not limit the 30-foot setback requirement to "some" slopes or to any "particular" slope. The Hearings Officer finds it would be presumptuous, and not legally supportable, to interpret the term "slope" as requested by Applicant (i.e. "slope only refers to the Tumalo Canyon rim).

The Hearing Officer finds Conway's request to "approve the Westgate Master Plan and Tentative Plan with an ongoing condition of approval that all future building improvements observe the 30-foot setback imposed by DCC 19.22.050(H) is reasonable. The Hearings Officer finds that with such a condition this approval criterion can be met.

Staff, in the Staff Report, requested the Hearings Officer determine the meaning of "edge of any slope." Staff suggested that "edge of any slope" could mean "top and bottom of edges" or it could refer to only the "top edge." The Hearings Officer agrees with Staff that the phrase "edge of any slope," in the context of determining a point of measurement (for the 30-foot setback) may be an ambiguous phrase. The Hearings Officer notes that no evidence was brought to the attention of the Hearings Officer, following the issuance of the Staff Report, addressing this issue at the Hearing.

The dictionary definition of "edge" is:

- *The line where an object begins or ends*
 - *A point near the beginning or the end"*
- Merriam-Webster Dictionary*

The Hearings Officer finds, with the dearth of assistance from persons or entities involved in this case, that "edge" means, in the context of DCC 19.22.050(H), both the top and bottom edges. While the Hearings Officer believes a reasonable interpretation of "edge," in the context of DCC 19.22.050(H), would include only the "top edge" there simply is no substantial evidence in the record (such as legislative history) to support such an interpretation.

The Hearings Officer finds this approval criterion can be met with condition of approval requiring all future building improvements on the Subject Property observe the 30-foot setback imposed by DCC 19.22.050(H).

Section 19.22.060. Land Divisions.

All residential subdivisions shall be master planned under DCC 17.16.050 and shall comply with the following.

A. Master Development Plan Requirements. In addition to the overall master development plan requirements of DCC 17.16.050, such master development plans in the Westside Transect Zone shall also demonstrate:

- 1. The lot configuration, street layout, parking lots, trails and any open space, common areas, and public parks are designed to be compatible with existing or projected uses on adjacent properties and provide sufficient public access to and through the subject property;**

FINDING: The master development plan requirements of DCC 17.16.050 are reviewed separately in this decision. Applicant, in its burden of proof, it stated:

"The Westside Transect Zone (WTZ) allowed uses, requirements, and criteria were adopted by the County, with compatibility as a cornerstone. Compatibility with adjacent neighborhoods, parks, wildlife and forest lands has been incorporated into DCC 19.22 Westside Transect Zone and compliance with the criteria of this section of the code ensures compatibility. As noted in the WTZ zone change application, "[t]he low density residential development permitted in the WTZ is intended to minimize conflicts with urban uses with the City of Bend and the natural resource values of Shevlin Park and Tumalo Creek to the west."

Lot configuration: Existing and proposed uses to the north, south, and east are all residential. The proposed lots for the subject project are all large lots (2.5 acres and larger) and are significantly larger in size than the existing and planned adjacent developments. This strategy is to provide for a transition area ("transect") between urban development in the City to the east and Shevlin Park and forestlands to the west, minimizing conflicts between urban and rural uses. Additionally, the proposed uses for the lots are solely residential, a permitted use in the zone. As noted in the WTZ zone change hearings officer recommendation (247-18-000612-ZC):

The proposed use has been designed in a manner that is entirely compatible with adjacent land uses. The low density residential development authorized in the WTZ will minimize the potential for conflicts with both urban uses within the City of Bend and the natural resource values of Shevlin Park and Tumalo Creek to the west. Individual residential home sites within the WTZ will be buffered from the park boundary and Shevlin Park.

...

The South Property borders lands zoned for urban development to the north and east. The existing Shevlin Commons development borders the property directly to the north. Platted rural residential lots (2-acres in size) abut the property to the south. Shevlin Park and Tumalo Creek border the property to the west, where no development (other than public park uses) is contemplated or authorized... The low density residential development standards within the WTZ will be entirely compatible with the size and configuration of lots within the adjacent Tree Farm residential development. Substantial topography (rock

outcroppings and a steep ridge line) will separate the South Property from planned urban development to the east.'

Open Space/ Trails/ Parks: The open space shown on the Westgate subdivision tentative plan can be categorized into four groups: conservation area, no build zone, natural areas, and open space to be dedicated to BPRD. Each open space was designed with a specific focus on compatibility:

Conservation Area: Reserved as a dedicated wildlife corridor, with a focus on maintenance of wildlife habitat.

No Build Zone: To be managed and maintained primarily for fire protection purposes.

Natural Areas: Visually unique locations, highlighted for preservation as natural resources.

Future BPRD Property: Provides a buffer between proposed development and neighborhoods to the north, as well as trail connectivity to Bull Springs Trail and Shevlin Park for surrounding neighborhoods.

Shevlin Park borders the subject property to the west; further west is the Deschutes National Forest. A minimum of 450' has been reserved between the park and buildable area along the western edge of the proposed development, as conservation and no build areas, for both wildfire and wildlife management. These areas are clearly depicted in the tentative plan and will be defined as through open space and no build easements. The management of these areas is detailed in the draft CC&Rs (Exhibit G), which will be enforced through an HOA.

Along the northwestern edge of the subject property, approximately eight acres are proposed for donation to Bend Parks and Recreation District, to provide natural open space areas and neighborhood bike and pedestrian connections. These significant management corridors and open spaces will further reinforce the compatibility between neighborhoods and Shevin Park, by providing buffers along the entire west side of the subject property.

The WTZ zone change hearings officer recommendation noted:

'Proposed WTZ development standards will maintain critical areas of wildlife habitat and preserve existing deer and elk migration corridors along the Tumalo Creek corridor. Future residential landowners will be required to maintain their individual lots in a manner that is compatible with both the protection of existing wildlife habitat and the suppression of fire. Individual structures erected within the WTZ must comply with national fire protection standards, with lot owners required to maintain fire protection buffers around all buildings and home sites. The fire management prescriptions of the WTZ are expected to significantly reduce the threat of a wildfire spreading from the forested lands to the west into the City of Bend. Adoption of the WTZ significantly reduces or ameliorates the overall environmental impacts of developing the subject properties and substantially benefits environmental qualities on adjoining lands.'

The WTZ zone change hearings officer recommendation continues:

'As a condition of development approval, the applicant is prepared to dedicate a 50-acre "Conservation Area" immediately adjacent to its boundary with Shevlin Park. The Conservation Area will be managed under the terms of a conservation easement that will protect and preserve areas of wildlife habitat. In addition, the applicant intends to create an additional 30-acre "No-Build Area" immediately east of the Conservation Area. The "No-Build Area" will be part of individual lots but no structures will be permitted and the area will be managed primarily for fire protection purposes. The protection of these two areas (located along the western boundary of the South Property) will insure that management of the WTZ is compatible with Shevlin Park. The planned Conservation Area and No Build Area will work to insure that residential development within the WTZ is not visible from Tumalo Creek. The joint management of such areas will provide additional protections for the natural resource and public values of Shevlin Park.

Fire management standards within the WTZ will provide a benefit to the residential development to the north, south and east. A portion of the planned No-Build Area will provide an additional fire protection buffer between the Shevlin Commons development and the South Property.'

The proposed development also includes multiple trails that will connect adjacent neighborhoods through the development and to open spaces and Shevlin Park.

Compliance with DCC 19.22 Westside Transect Zone ensures that the proposed subdivision is designed to be compatible with adjacent neighborhoods, open space, and wildlife. A natural trail is proposed to connect to future and existing areas of Northwest Crossing, through the proposed Westgate subdivision to the north-south extension of Sage Steppe Road, where the path becomes a paved multiuse path. At the north end of Westgate, another trail connects to the multiuse trail to connect bicyclists and pedestrians to the eight acres of dedicated open space and to the existing Bull Springs Trail that provides access to Shevlin Park. These trail connections provide significant access to surrounding neighborhoods.

The proposal does not include parking lots or public parks.

Streets/Public Access: The proposed development includes one north-south street, designed to County collector standards, which will connect existing developments to the north and south through the extension of existing roadways. This main "spine" will be accessed by private streets to serve the proposed development, including a looping street through the western portion of the property. This proposed north-south roadway will provide not only public access to the proposed development, but also a street for north-south vehicular, pedestrian and bicycle connectivity from the Shevlin Park area ultimately to Skyliners, without accessing Mt. Washington Way. As the subject property is bounded by Shevlin Park on the west and topography on the east, there are no proposed or existing east-west connections. The street layout is designed to be compatible with uses on adjacent properties while providing connectivity that is currently not available on the far west side of Bend."

As noted earlier in this decision the Hearings Officer in this case is the same hearings officer who issued the recommendations quoted above. With that said, the Hearings Officer concurs with the Applicant’s statements and finds the proposed configuration and layout are compatible with existing and projected surroundings uses and provides sufficient access.

2. The development contributes to the preservation of natural and physical features of the site; and

FINDING: Applicant, in its burden of proof, stated:

“Preservation of natural and physical features is central to the Westgate subdivision development strategy. As detailed previously in this document, the proposed development dedicates significant acreage to conservation areas, natural areas, open space and no build areas; approximately 80 acres are included in one of these conservation categories. These areas are clearly depicted on the tentative plan and will be managed through separate tracts and/or no build easements. The CC&Rs include strict provisions for the preservation of these areas, through:

- o prohibition of certain activities (tree/vegetation removal without HOA approval, modification of topography, debris disposal, parking/motor vehicle access, burning of debris, construction),*
- o landscape maintenance,*
- o specific permitted uses, and*
- o implementation and enforcement of the Wildlife Habitat Management Plan and Wildfire Protection Management Plan.*

Additionally, due to the nature of large lot developments, each individual lot will include areas that remain natural.”

The Hearings Officer concurs with the above-quoted statements by Applicant and finds the proposed development contributes to the preservation of natural and physical features of the Subject Property.

3. Compliance with provisions of the Oregon State Scenic Waterway Act and the Deschutes County Landscape Management Combining Zone, as applicable.

FINDING: The Subject Property is not located within an Oregon Scenic Waterway nor is it within the Landscape Management Combining Zone. The Hearings Officer finds these provisions do not apply.

B. Residential lots shall be limited to 100 residential lots for the North Transect and 87 residential lots for the South Transect, as depicted on Figure 1 at the end of this chapter.

FINDING: The proposal includes the entire South Transect area and consists of 85 residential lots, two less than the maximum. The Hearings Officer finds this approval criterion will be met.

C. The subdivision shall be designed in accordance with a Wildlife Habitat Management Plan and a Wildfire Mitigation Plan for the subdivided property as described below and submitted with the master development plan application.

1. A Wildlife Habitat Management Plan prepared by a professional biologist which identifies important wildlife habitat and migration corridors and contains provisions for deed restrictions or restrictive covenants which include but are not limited to the following components:

a. Dedicated open space and/or resource management corridors with specific enforceable measures to aid in wildlife migration and protect habitat within these areas.

FINDING: Applicant, in its burden of proof, stated:

"A 'Wildlife Habitat Management Plan for the Rio Lobo Property' was produced for the subject property by Mason, Bruce & Girard, Inc., dated December 21, 2017. The submitted Wildlife Habitat Management Plan notes that the subject property is located within a biological mule deer and elk winter range, as identified by the Oregon Department of Fish and Wildlife ("ODFW"). As a result of this study and significant coordination with interested agencies and organizations, a large conservation and no build area is proposed along the entire western border of the proposed subdivision. This area is approximately 72 acres and is 450 feet wide at its narrowest and are proposed to be enforced through no build easements and CC&Rs.

The Wildlife Habitat Management Plan includes specific wildlife habitat conservation measures, which will be enforced by the Westgate CC&Rs. In addition to habitat management, the draft Westgate CC&Rs requires wildlife protection in Section 10.16:

10.16 Wildlife Protection. *Each Owner shall comply with such provisions of the Wildlife Habitat Management Plan as are applicable to his or her Homesite. The harassment, capturing, trapping, injuring, or killing of wildlife within the Property is expressly prohibited, except when reasonably necessary to avoid an imminent threat of personal injury or death to any person or except when reasonably necessary to protect property from damage by rodents or other pests and then only to the extent permissible under applicable laws. The feeding of wildlife or leaving salt blocks out for big game is also expressly forbidden.*

Article XII addresses enforcement of the covenants. More specifically, Section 12.1 provides the Association the right to assess fines and interest rates, enter the homesite to remedy the violation and assess owners for the work, suspend voting rights, place liens, and bring suit or action against the owner." [emphasis in original]

The Hearings Officer concurs with the Applicant's statements and finds the proposed development meets the Wildlife Habitat Management Plan requirements of this section to aid in wildlife migration and habitat protection.

- b. Specific vegetation management standards for areas within the open space and/or resource management corridors to protect wildlife habitat funded through homeowner assessment and performed, monitored and enforced by the homeowners association.**

FINDING: Applicant, in its burden of proof, stated:

"The Wildlife Habitat Management Plan (WHMP, Exhibit D) notes that the Singleton Wildfire Management and Forest Health Plan (WMFHP) was developed in conjunction with the WHMP "in order to produce a comprehensive vegetation management plan that will reduce the threat of wildfire spread while also maintaining quality wildlife habitat within the conservation area, the designated open space, and in the undeveloped portions of the residential lots. As explained in the WMFHP, vegetation will generally be managed in compliance with the National Fire Protection Association (NFPA) codes and defensible space standards which use a zone of protection approach." The WHMP continues to note that "[t]he following provisions will be implemented to maintain wildlife habitat value within the context of the NFPA standards...:

- *Downed logs: Downed logs will be left as a source of visual screening if they will not act as ladder fuel, per guidance provided in the WPMP. Where possible, retain an average of two downed logs per acre, consistent with the goals of adjacent Shevlin Park (Boldenow 2008).*
- *Standing snags (dead trees) provide food and nest site locations for wildlife, especially cavity nesting birds (Photo 1, Appendix B). Leave snags in place where practical. The density target for snags will be two of each per acre, consistent with the goals of adjacent Shevlin Park (Boldenow 2008).*
- *Brush: Leave patches of brush (Photos 4 and 10, Appendix B), especially those associated with rock outcrops. Most brush under the drip line of trees must be removed often enough to maintain a distance of at least three times the height of the ground fuel and the tree crown. In open areas, older and taller brush patches can be maintained and remain consistent with the fire protection guidelines (WMFHP).*
 - *Patches of brush will specifically be left within the conservation area along the western boundary of the PSA and opportunistically within other open spaces and building lots when also in compliance with the WMFHP (see current brush patch pattern in Figure 3).*
 - *Brush patches will be maintained in a mosaic pattern following a multi-year cycle of brushing so that brush patches will vary in age and height.*
- *Slope-specific brush treatments: Hand-pruning treatments will be used to maintain brush patches as wildlife habitat while also providing breaks in the linear continuity of brush patches oriented along steep slopes and rock outcrops; consistent with a fire fuels reduction practice (WMFHP).*

The Wildlife Habitat Management Plan continues on to note that the above vegetation treatments will support deer and other wildlife species and particularly suggests its application in the conservation area along the western border of the subject property, in order to maintain a north-south travel corridor.

Article IV, Section 4.2 gives the HOA the authority to utilize the operating fund for the "performance of all the Association's obligations under the following: the COL Agreement, the Revised Wildlife Health and Forest Health and Management Plan the Wildlife Habitat Management Plan, the Wildfire Protection and Management Plan...". Article XII of the draft CC&Rs provides the HOA authority to enforce the requirements of the CC&Rs.

This criterion has been met through the establishment of vegetation standards through the wildlife habitat and wildfire mitigation plans, and the mechanism by which to fund and enforce them through the CC&Rs."

The Hearings Officer concurs with the Applicant's statements and finds the homeowners association's responsibilities for vegetation management will be met.

c. Specific setbacks from wildlife corridors.

FINDING: Applicant, in its burden of proof, stated:

"The primary wildlife corridor identified by the Wildlife Habitat Management Plan is a north-south route along the western edge of the subject property. The proposed tentative plan includes a significant structure setback from Shevlin Park (minimum of 450 feet).

'The conservation area proposed in the Preliminary Plan along the western edge of the PSA is designed to provide a minimally obstructed wildlife travel corridor, especially for deer and elk, that is contiguous with adjacent protected areas to the west of the development (the riparian zone of Tumalo Creek, Shevlin Park, and public lands farther to the west). In conjunction with other development plans and their associated open spaces located to the north and south of the PSA, this conservation area provides a key link in the landscape-level continuity of wildlife habitat maintained along Tumalo Creek. The corridor follows the natural topography of a ridge that parallels the creek, originating on the southwestern border with the WA zone, and gently dropping down in elevation toward the riparian zone of Tumalo Creek to the north-west of the PSA (Figure 4). According to ODFW biologists, deer migrating through the Bend area on an east-west path are already likely to avoid residentially developed areas, travelling instead along the southern border of the City; however, animals approaching the developed areas are likely to continue using contiguous corridors such as that along Tumalo Creek.'

The setback from this wildlife corridor on the western border of the subject property will be enforced through easements and CC&Rs."

The Hearings Officer concurs with the Applicant's statements and finds the wildlife setbacks will be met.

d. Provisions which demonstrate coordination with the Wildfire Mitigation Plan described below to establish joint management

objectives and designated areas for wildlife habitat measures which are outside of the defensible space and wildfire mitigation areas.

FINDING: Applicant, in its burden of proof, stated:

"A Revised Wildlife Habitat and Forest Health Management Plan was developed to "balance the protection of wildlife with a wildland fire management plan." This plan includes a comprehensive vegetation management plan to reduce the threat of wildfire spread while maintaining quality habitat. This plan includes various strategies for wildlife habitat measures outside of the defensible space and wildfire mitigation areas, such as:

- maintenance of forest health and landscape resiliency*
- fencing standards for the subdivision*
- limitations on allowed uses (e.g. no high intensity recreational uses)*

Additionally, Section VII of this plan includes restrictions for the entire subject property, including:

- o No high-intensity recreational uses (i.e. playgrounds or motorized uses) will be allowed.*
- o No fireworks of any type are allowed.*
- o No hunting, discharge of firearms or trapping is allowed.*
- o No use of drones will be allowed."*

The Hearings Officer concurs with the Applicant's statements and finds the wildfire and wildlife plans accomplish the joint management objective of this criterion.

- e. Requirements for annual review of the plan by a professional biologist and a reporting of those findings and any recommended alterations to the plan to the homeowner association.***

FINDING: The Applicant's draft CC&Rs include a section¹ that provides for the periodic review of the Wildlife Habitat Management Plan. Staff, in the Staff Report, noted that this criterion requires annual review. The Hearings Officer finds that with a condition requiring that Applicant's proposed CC&R's be modified to require "annual" review of the Wildlife Habitat Management Plan this approval criterion can be met.

- 2. A Wildfire Mitigation Plan prepared by a professional forester that identifies and includes enforceable measures to prevent the ignition and spread of wildfire, and contains provisions for deed restrictions and/or restrictive covenants, enforced by a homeowners association, which include but are not limited to the following components:***
- a. Requirement to develop and maintain all residential lots in compliance with the most current National Fire Protection Association (NFPA) Zone 1, 2 and 3 standards, containing concentric rings extending outward from the structure implementing the defense in depth approach, with Zone 1: 30 feet adjacent to structures, Zone***

¹ Exhibit G, Section 5.5(C)

2: 30 to 100 feet from structures, and Zone 3: 100 to 200 feet from structures.

FINDING: Applicant, in its burden of proof, stated:

"A Wildfire Mitigation Plan (Exhibit C) was developed by Singletree Enterprises, LLC, dated December 19, 2017. This Plan includes vegetation management standards for structural defensible space, including the designation of Zone 1, Zone 2 and Zone 3 as concentric rings around structures, each with specific requirements. The developer's agreement with Central Oregon Landwatch (Exhibit E) includes an integrated plan for the management of wildlife habitat and forest health management. This plan requires the implementation and enforcement of these zonal rings for vegetation management around structures:

Zone 1: 30 Feet Adjacent to Structures

Use non-flammable landscaping materials within first 5 feet of structures. All vegetation and combustibles are removed from under decks and within 5 feet of the home or auxiliary structures. Outside of 5 feet, low-growing, resin-free fire resistive plants are carefully spaced and maintained, and are kept free of dead material that do not allow flame lengths greater than 3 feet. Areas of lawn must be well irrigated and regularly mowed. Mature trees are pruned to a height of 6 to 10 feet from the ground with no brush inside of the tree dripline. Juvenile trees are not pruned more than 20% of stem length. Trees may not touch the home. No firewood storage is permitted outside of an enclosed structure. This zone includes driveway/road surfaces.

Zone 2: 30 to 100 Feet from Structures

Plants are low-growing and well irrigated. Tree canopies are spaced at 15-20 feet, or 30 feet between small groups of small trees. Zone 2 treatments will extend to the lot boundary (beyond the 100-foot zone) when the lot is adjacent to down-hill slopes greater than 20%. Small individual brush species will be irrigated, maintained free of dead material and outside the dripline of trees.

Zone 3: 100 to 200 Feet from Structures

Trees will be thinned and pruned, woody debris removed and brush fields mowed or removed. Density of taller trees will be reduced and maintained so that canopies do not touch. Taller, more mature trees however, typically present less of a fire risk as long as brush is not present within the tree drip-line and lower limbs are pruned.

The Draft Westgate CC&Rs (Exhibit G) Section 4.4 requires compliance with the Wildfire Management, including a requirement for the Association to submit applications for the recognition of each homesite under the Firewise Communities USA/Recognition Program. Section 10.2 requires that landscaping plans for each Homesite be in compliance with the Wildfire Protection Management Plan. In addition, Section 5.5 of the draft CC&Rs requires that "The Association shall comply with all terms of the COL Agreement, Revised Wildlife Habitat and Forest Health Management Plan, and Wildlife Habitat Management Plan."

The Applicant has complied with the requirements of this section through numerous mechanisms - through the Wildfire Mitigation Plan, the Revised Wildlife Habitat and Forest Health Management Plan. These Plans are implemented and enforced by the draft CC&Rs and the Central Oregon Landwatch Agreement.” [emphasis in original]

The Hearings Officer concurs with the Applicant’s above-quoted statements and finds the proposal complies with the three-zone, concentric ring defensible space requirements of this section.

- b. Enhanced construction design and materials to prevent home ignition from external fire sources.***
 - c. Requirements and specific provisions for ongoing vegetation management funded through homeowner assessment and performed, monitored, and enforced by the homeowners association, as adopted by Deschutes County or as recommended in forest management plan, whichever standard is the most stringent.***
 - d. Provisions which demonstrate coordination with the Wildlife Habitat Management Plan described above to establish joint management objectives and designated areas for wildlife habitat measures which are outside of the defensible space and wildfire mitigation areas.***
 - e. Requirements for annual review of the plan by a professional forester and annual reporting of those findings and any recommended alterations to the plan to the homeowner association.***
- D. A Stewardship Community Plan which includes provisions designed to educate residents of the unique resource values of the area and the community goals to utilize best management practices in the community development and operation to protect wildlife habitat and to establish and implement firewise community strategies.***

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

“The Stewardship Community Plan is included in Exhibit E as part of the Rio Lobo - Landwatch Agreement. This agreement encompasses the Revised Wildlife Habitat and Forest Health Management Plan, which includes community implementation approaches for the integration of the wildlife and wildfire management plans, focused on the unique resource values of the area. The intent of the plan is to balance the protection of wildlife with a wildland fire management plan within the Westside Transect Zone, to ensure the protection of wildlife habitat in a known wildfire hazard area.

The Plan includes best management practices to protect the wildlife habitat and implement firewise community strategies, most of which were developed in collaboration with multiple agencies during the zone change process.

More specifically, the integrated plan includes prescriptive requirements for:

- o Vegetation management standards for structural defensible space (by zones)*

- *Vegetation management standards for wildlife*
- *Management of Forest Health and Landscape Resiliency*
- *Structural Design and Materials Selection*
- *Operational Issues and Standards (evacuation routes, communication plans)*
- *Wildlife Habitat Measures*

This Stewardship Community Plan requires education and enforcement by the homeowners' association through the CC&Rs.

The Hearings Officer concurs with the Applicant's statements but questions how the details of this "Stewardship Community Plan" are planned to be communicated to new residents.

Similar to earlier findings where the Hearings Officer found that a condition of approval was required to assure that the CC&Rs required an annual review of the Wildlife Management Plan. The CC&Rs should be required to include annual review and reporting requirements of this approval criterion. With such a condition the Hearings Officer finds this approval criterion can be met.

E. Mandate deed restrictions and/or restrictive covenants that implement lot-specific and applicable general provisions of the Wildlife Habitat Management and Wildfire Mitigation Plans. The deed restrictions and/or restrictive covenants must run with the land and must be enforceable by the homeowner association.

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

"Draft restrictive covenants for the proposed subdivision are included in Exhibit G. These CC&Rs require individual lot compliance with the Wildlife Habitat Management Plan, Wildfire Protection and Management Plan and the Revised Wildlife Habitat and Forest Health Management Plan. These CC&Rs will be recorded and will run with the land, enforceable by the homeowner association. The restrictive covenants submitted with this master plan and tentative plan submittal are in draft form and the Applicant reserves the right to make corrections and changes prior to recording."

On July 19, 2019, the Applicant provided the following supplemental statement:

"The Applicant's intent is to record CC&Rs in phases. During each phase, CC&Rs will be recorded for the individual lots created, but not for the remainder parcel, until it is developed into individual lots in subsequent phases."

Staff, in the Staff Report, concurred with the Applicant's above-quoted statements but noted that the final CC&Rs presented for recording must substantially conform to those reviewed or modified as part of this review process. Staff noted, in the Staff Report, that revised CC&Rs would be reviewed in detail at the time of Final Plat submissions and if the CC&Rs were found to contain more than corrections or minor changes related to the approval criteria listed in the Staff Report, then the Community Development Planning Division has the right to reject the modifications.

The Hearings Officer agrees that Applicant, Homeowners Association or successors in interest, should have the right to modify the proposed CC&Rs. However, the Hearings Officer also agrees with Staff that any changes must be in substantial conformance with to the CC&Rs submitted by Applicant (Exhibit G, Section 5.5(C)) and may not diminish the Applicant's or successor to Applicant's obligations related to the Wildlife Management Plan, Wildfire Protection and Management Plan and Revised Wildlife Habitat and Forest Health Management Plan (including review and reporting requirements).

F. *Mandate that the recorded duties and obligations of the homeowners association compel the homeowners association to provide for enforcement of the deed and/or covenant restrictions, maintenance of any common property, open space or resource management corridors and private streets, and provide for the assessment and collection of fees to fund the deed and/or covenant restrictions.*

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

*"The draft CC&Rs for the subdivision are included in Exhibit G. Article III defines specific types of assessments that will be required to **'promote the recreation, health, safety and welfare of the Owners and Occupants of the Property for the improvement, operation and maintenance of the Common Maintenance Areas and other areas to be maintained by the Association.'** The CC&Rs define the Common Maintenance Areas to include common areas, conservation area, natural areas, no-build zone, multiuse paths, private streets, neighborhood signage, common area utilities, and Sage Steppe Drive until it is accepted as a county road by the County.*

The CC&Rs direct the development of an Operations Fund for these maintenance expenditures (Section 3.6). Article XII empowers the Association to enforce the CC&Rs, through the following measures:

- o assessment of fees (12.1(A)),*
- o entering offending Homesite to remedy the violation (12.1(B)),*
- o tow vehicles in violation (12.1(C)),*
- o suspend voting rights and utility services (12(D)), and*
- o bring suit or action against an owner (12(E)),*

The proposed development can comply with this criterion upon recording of the CC&Rs at time of final plat, based on the detailed draft CC&Rs including requirements and enforcement."
[emphasis in original]

Staff, in the Staff Report, expressed concurrence with the Applicant's above-quoted statements but noted that the reference to Sage Steppe should include the entire extension of Sage Steppe and McClain Drive. Staff, in the Staff Report, also noted that the public road extension through the subdivision may never be accepted by the County for road maintenance, although it will be required

to be dedicated to the public. This topic is further discussed in the findings for Title 17 approval criteria in this decision.

Article XII, section 12.1 in Applicant's proposed/draft CC&Rs gives the HOA, "the right to do any or all of the following", followed by a list of enforcement actions. Staff, in the Staff Report, expressed concern as to whether this enforcement provision "*compelled*" the HOA to enforce the CC&Rs or only grants the option to enforce the CC&Rs. Staff, in the Staff Report, requested that the Hearings Officer consider requiring the Applicant to revise the CC&Rs to achieve compliance.

Staff, in the Staff Report, noted that the WTZ Zone criteria sets out responsibility for the Homeowners Association to inspect, review, enforce, and manage several ongoing critical aspects of the subdivision that are described in the sections above. The Hearings Officer shares the Staff's above-referenced concerns. In particular, enforcement obligations related to the Wildlife Management Plan, Wildfire Protection and Management Plan and Revised Wildlife Habitat and Forest Health Management Plan (including review and reporting requirements) should be mandatory upon the Homeowners Association.

Staff, in the Staff Report, also raised "a speculative concern" related to the Homeowners Association and CC&Rs. Staff inquired as to what would happen if the Homeowners Association for the proposed development would disband, dissolve or otherwise cease operation. Staff was concerned about the County's ability to enforce the requirements set out in this decision. Staff, in the Staff Report, noted that Section 2.1 of the draft CC&Rs provides some guidance. This section states that "In the event that the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association having the same name and purpose ..." Staff questioned whether or not the County had the ability to enforce against the Homeowners Association, an unincorporated association, or individual lot owners for non-compliance.

The Hearings Officer finds it reasonable and appropriate to require, as conditions of approval in this decision, the Applicant to have CC&Rs that address relevant approval criteria. The Hearings Officer finds that it is beyond the Hearings Officer's authority to anticipate and thereby condition the approval upon the possible demise of the proposed Homeowners Association. The Hearings Officer finds that the County, under the approval and conditions imposed in this decision, has the right to enforce the decision. If the Homeowners Association remains in legal existence the County shall have the right to enforce conditions of approval against the Homeowners Association. If the Homeowners Association disbands, dissolves or otherwise ceases operation the County shall have the right to enforce the approval and conditions of this decision against any successor organization and/or against individual property owners within the development.

The Hearings Officer finds, with the condition of approval set forth below, that this approval criteria can be met.

HOA Reporting: **As an ongoing condition of approval**, the Homeowners Association, or any successor or equivalent organization or if no such organization then individual owners of lots shall be required to annually review of the Wildlife Habitat Management Plan. Further, the

County may request the Homeowners Association, or any successor organization or if no such organization then individual owners of lots, shall to provide within a reasonable timeframe documentation demonstrating compliance with the reporting, annual review, maintenance, and other responsibilities associated with the Wildlife Habitat Management Plan, Wildfire Mitigation Plan, and Stewardship Community Plan, as described in DCC 19.22.060 (C)-(F).

G. *If phasing is proposed, a phasing plan for the tentative subdivision plats [shall be provided]. Each tentative subdivision application shall include a plat map meeting the subdivision requirements of DCC Title 17, the Subdivision / Partition Ordinance, except as may be specifically modified herein.*

FINDING: The Applicant proposed a subdivision in eight phases as part of its Tentative Plan. Compliance with this criterion is ensured through the review of Title 17 criteria within this decision.

Section 19. 22.070. Street Improvements.

Subject to applicable provisions of DCC Title 17, streets within the Westside Transect Zone may be private. For proposed private roads, on-street parking is prohibited and the owner shall submit proof of a homeowner's association, deed restriction or the equivalent to assure continued ownership, maintenance and repair of the private streets.

A. *Notwithstanding the allowance for private roads, the county may determine that public road(s) are required to meet public access and/or regional transportation needs and goals, including but not limited to a collector road to provide north-south connectivity through the Westside Transect Zone. The owner and homeowners association shall be jointly liable and responsible for all costs associated with initial construction of any such public road (including the one-year guarantee).*

FINDING: The proposed subdivision included a public right-of-way for a north-south connection, which will be an extension between McClain Drive and Sage Steppe and constructed to County collector road standards. The Applicant stated the developer would be responsible for initial construction costs and the Homeowners Association would be responsible for maintenance of the public road. The draft CC&Rs (Exhibit G) Section 1.10 – Common Maintenance Areas and Article IV requires the use of the Operating Fund for the maintenance of common areas.

The other roads within the subdivision are proposed to be private roads. The Applicant’s burden of proof stated:

“The remainder of the roadways are proposed to be private; ownership, maintenance and management of which will be conducted by the homeowners association. The draft CC&Rs (Exhibit G) include all private streets in the definition of “Common Areas” and require the HOA maintain all common areas. The CC&Rs further address the “no parking” enforcement and maintenance of these private roadways:

- o Section 10.11 addresses the enforcement of “no parking” on private streets.*
- o Section 4.2 details the uses of the Operating Fund, including the performance of the Association’s obligations under the Roadway Maintenance Agreement.”*

Staff, in the Staff Report, recommended the following condition of approval for parking. The Hearings Officer finds, with Applicant's proposed CC&Rs and Staff's recommended condition below, these approval criteria will be met

Street Parking: **As an ongoing condition of approval**, on-street parking is prohibited on private roads within the subdivision.

Section 19.22.080. Off-street Parking.

Off-street parking shall be provided as required in DCC 19.80.

FINDING: Compliance with the parking standards of DCC 19.80 are reviewed within this decision.

Section 19.22.090. Fence Standards.

The following fencing provisions shall apply for any fences constructed as a part of residential development:

- A. New fences shall be designed to permit wildlife passage. The following standards and guidelines shall apply unless an alternative fence design which provided equivalent wildlife passage is approved by the County after consultation with the Oregon Department of Fish and Wildlife:***
 - 1. The distance between the ground and the bottom strand or board of the fence shall be at least 15 inches.***
 - 2. The height of the fence shall not exceed 48 inches above ground level.***
 - 3. Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.***
- B. Fences encompassing less than 10,000 square feet which surround or are adjacent to residences or structures are exempt from the above fencing standards.***

FINDING: No specific fencing is proposed at this time. The Applicant stated that the draft CC&Rs require compliance with DCC 18.22.090 and also prohibit perimeter fencing of home sites, except for wooden split rail fencing which abuts open space. Staff, in the Staff Report, proposed the following condition of approval to ensure ongoing compliance with these criteria. The Hearings Officer concurs with Staff's comments and recommended condition of approval. The Hearings Officer finds that with the proposed CC&R's and Staff's recommended condition of approval these criteria can be met.

Fencing: **As an ongoing condition of approval**, any fence constructed as a part of residential development shall comply with DCC 19.22.080.

Chapter 19.80, Off-Street Parking and Loading

Section 19.80.030. Off Street Parking.

Off street parking space shall be provided and maintained as set forth in DCC 19.80.030 for all uses in all zones, except for the CB zone. Such off street parking spaces shall be provided at the time a new building is hereafter erected or enlarged or the use of a building existing on the effective date of DCC Title 19 is changed. Improved off street parking shall mean paved with two inches of paving.

Section 19.80.040. Number of Spaces Required.

Off-street parking shall be provided as follows:

A. Residential.

One, two and three-family dwellings:	2 spaces per dwelling unit.
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FINDING: The maximum density within the WTZ Zone is one single-family dwelling per lot. Staff, in the Staff Report, recommended the following condition of approval to ensure compliance with DCC 19.80. The Hearings Officer concurs with Staff's comments and recommended condition of approval.

Parking: Prior to the issuance of building permits for dwellings on individual lots, each dwelling unit shall provide a minimum of two paved parking spaces.

Chapter 19.88, Provisions Applying to Special Use Standards.

Section 19.88.210. Solar Setbacks.

- A. Purpose. The purpose of DCC 19.88.210 is to provide as much solar access as practical during the winter solar heating hours to existing or potential buildings by requiring all new structures to be constructed as far south on their lots as is necessary and feasible.**
- B. Standards. Every new structure or addition to an existing structure shall meet the following standards except as provided in DCC 19.88.210(C):**
 - 1. South Wall Protection Standard. The south wall protection standard is established in Appendix A, and all new structures or additions shall meet this standard if feasible. If it is not feasible due to physical constraints of the lot, including but not limited to, rock outcroppings, septic systems, existing legal restrictions or lot dimensions as determined by the Planning Director, then the structure or addition must be located as far to the south on the lot as feasible and must meet the standard set forth in DCC 19.88.210(B)(3)(b).**
 - 2. South Roof Protection Standard. All new structures or additions to existing structures shall meet the standard for south roof protection set forth in Appendix B.**

- 3. **Exceptions. The south roof protection standard shall not apply only if the applicant establishes:**
 - a. **That the structure cannot be located on the lot without violating the requirements contained in Appendix B of Ordinance No. 83 041; and**
 - b. **That the structure is built with its highest point as far to the south as feasible; and**
 - i. **That the structure is a single family residence with a highest point less than or equal to 16 feet high; or, if not a single family residence;**
 - ii. **That it is a permitted or conditional use for the lot.**
- C. **Exemptions.**
 - 1. **The governing body may exempt from the provisions of DCC 19.88.210 any area which it determines unfeasible for solar use because the area is already substantially shaded due to heavy vegetation or steep north facing slopes and any area or zone in which taller buildings are planned.**
 - 2. **The Planning Director shall exempt a structure from the provisions of DCC 19.88.210 if the structure will shade only a protected area in which solar uses are not feasible because the protected area is already substantially shaded at the time a request for exemption is made and approved by the Planning Director.**
 - 3. **The Planning Director shall exempt a structure from the provisions of DCC 19.88.180, if the structure is in conformance with a solar height restriction as provided in Ordinance 81 043, Deschutes County Subdivision/Partition Ordinance, as amended.**

FINDING: The smallest proposed lots in the subdivision will be a minimum of 2.5 acres in size, leaving enough space to meet the solar setback requirements. Compliance with this criterion is already ensured by the Setback and Yard Requirements condition of approval.

TITLE 17 OF THE DESCHUTES COUNTY CODE, SUBDIVISIONS:

Chapter 17.16, Approval of Subdivision Tentative Plans.

Section 17.16.040. Protective Covenants and Homeowner Association Agreements.

Landowner covenants, conditions, and restrictions and homeowner association agreements are not relevant to approval of subdivisions and partitions under DCC Title 17, unless otherwise determined by the County to carry out certain conditions of approval, such as road maintenance or open space preservation. Any provisions in such agreements not in conformance with the provisions of DCC Title 17 or applicable zoning ordinances are void.

FINDING: As discussed above in this decision, there are CC&R requirements for the proposed subdivision pursuant to DCC 19.22. No other landowner covenants, conditions, or restrictions have been proposed or considered as part of this application.

Section 17.16.050. Master Development Plan.

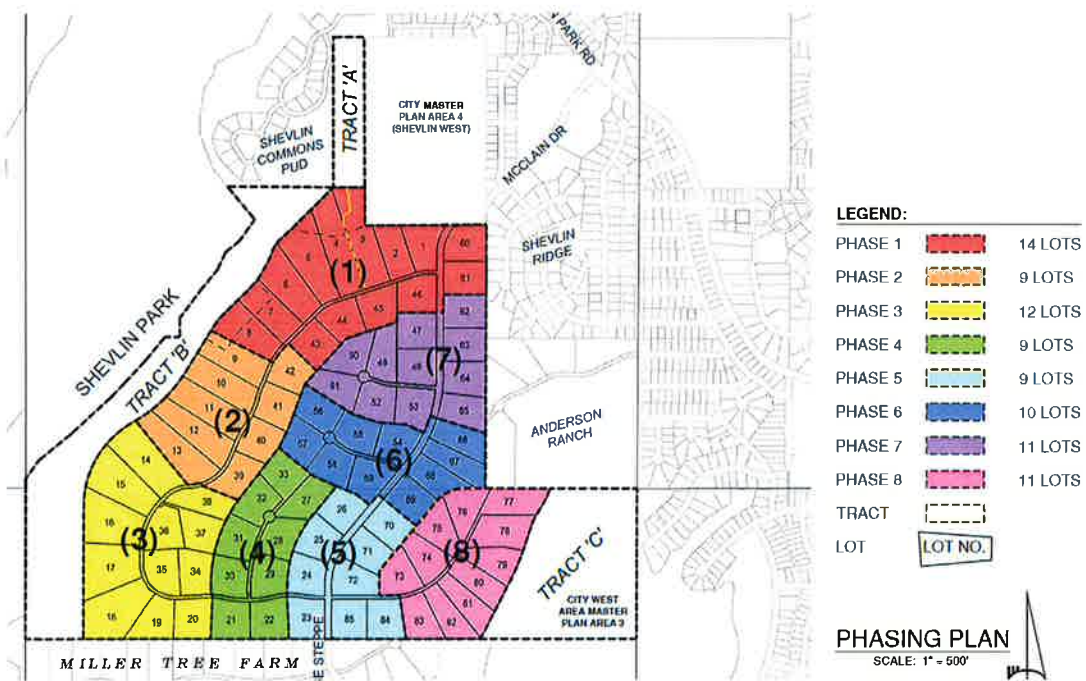
An overall master development plan shall be submitted for all developments affecting land under the same ownership for which phased development is contemplated. The master plan shall include, but not be limited to, the following elements:

FINDING: A Master Development Plan is required under this section as well as DCC 19.22.060.

A. Overall development plan, including phase or unit sequence;

FINDING: The Applicant proposed an overall development plan of an 85-lot subdivision with eight specific phases. A portion of the sheet containing the phasing map submitted as part of the application is included below as Figure 2.

Figure 2 - Phasing Plan



B. Show compliance with the comprehensive plan and implementing land use ordinances and policies;

FINDING: Titles 17, 18, 19, and 22 of the DCC are the implementing land use ordinance and policies of the Deschutes County Comprehensive Plan. All relevant chapters and sections of the DCC are reviewed for compliance in this decision. Staff noted, in the Staff Report, that it was unaware of any specific goals or policies contained in the Comprehensive Plan that are not addressed by the

relevant criteria found within the DCC, as it applies to this subdivision proposal. Based upon the evidence in the record the Hearings Officer concurs with Staff's comments.

C. *Schedule of improvements, initiation and completion;*

FINDING: The Applicant indicated that it intended to initiate the development of one or two phases immediately upon receiving land use approval. The application goes on to explain the development of the other phases will occur as market conditions and demand allows. The goal is to complete one or two phases per year, with an anticipated completion of the subdivision within approximately eight years, depending on the real estate market.

D. *Overall transportation and traffic pattern plan, including bicycle, pedestrian and public transit transportation facilities and access corridors;*

FINDING: The application materials show a north-south public right-of-way connection, several private roads, a separated multiuse path for bicyclists and pedestrians, and natural trails. No public transportation facilities are provided.

E. *Program timetable projection;*

FINDING: This criterion is similar to (C) above and the Hearings Officer incorporates those findings here.

F. *Development plans for any common elements or facilities;*

FINDING: The Applicant has not proposed any common development or facilities beyond the roads, multiuse path, and natural trails. The only development proposed in the open space Tracts A, B, and C are natural trails.

G. *If the proposed subdivision has an unknown impact upon adjacent lands or lands within the general vicinity, the Planning Director or Hearings Body may require a potential development pattern for streets, bikeways and access corridors for adjoining lands to be submitted together with the tentative plan as part of the master development plan for the subject subdivision.*

FINDING: Applicant, in its burden of proof, stated:

“Adjacent lands to the north and east are urban (City) residential subdivisions; Shevlin Park is immediately to the west; and The Tree Farm, a rural (County) residential subdivision is to the south. County staff and Applicant have coordinated for several years regarding the subject property, through the Westside Transect Zone change process and pre-application meetings for this master plan and tentative plan application. Mitigation for potential impacts to the Shevlin Park area are addressed throughout this narrative, through the development and implementation of the wildfire and wildlife management plans. Due to the presence of topography in the eastern side of the property, no impacts are anticipated to the adjacent development to the east as there are no

access points between the two areas. The Tree Farm to the south was developed with an understanding of potential future development to the north, and even included an abutting street (Sage Steppe) for future connectivity to the north.

The Applicant was party to the Westside Infrastructure Group (WIG) and entered into a Development Agreement (WIG DA, Ordinance NS-2316, effective November 16, 2018) with the City of Bend that assessed the infrastructure impacts and mitigations to City infrastructure as a result of the combined westside development. Ordinance NS-2316 notes “[b]ecause the uses and density of the Properties are either prescribed by the BCP and BDC ...the overall off-site infrastructure impact as a result of development of the Properties can be reasonably determined and addressed. The purpose of this Agreement is to provide for the equitable allocation of these costs, and define development triggers and assignment of responsible parties for the construction of the required public improvements to fully mitigate off-site sewer, water and vehicular transportation infrastructure impacts from the development of the Properties subject to this Agreement.” As such, the WIG Development Agreement analyzed all City water and street services for this master plan area. The terms of the Development Agreement commit the Applicants and the City of Bend to the terms of the agreement for a period of 15 years.

No unknown impacts on adjacent lands have been determined that would require submittal of potential development patterns for adjoining lands.”

The Hearings Officer accepts, as reasonable and appropriate, Applicant’s above-quoted statements. The only impact to adjoining land that may be of concern is the place of connection along the extended McClain Drive at the boundary between the Subject Property and the adjacent property at 3229 NW Shevlin Park Road, Map and Tax Lot 17-11-26, 400. The adjacent property is within the city limits and McClain Drive will need to be extended through that property as well to ultimately provide access to and through the Subject Property. The Hearings Officer finds, based upon Applicant’s statements, that this approval criterion will be satisfied.

Section 17.16.070. Development Following Approval.

Once a master plan is approved by the County, the plan shall be binding upon both the County and the developer; provided, however, after five years from the date of approval of the plan, the County may initiate a review of the plan for conformance with applicable County regulations. If necessary, the County may require changes in the plan to bring it into conformance.

FINDING: This section is included for reference to these procedural requirements.

Section 17.16.080. Tentative Plan as a Master Plan.

A. *As an alternative to the filing of a master plan for phased development, the applicant may file a tentative plan for the entire development. The plan must comply with the provisions of DCC Title 17 for tentative plans.*

- B. If the applicant proposed to phase development, he shall provide sufficient information regarding the overall development plan and phasing sequence when submitting the tentative plan.**
- C. If the tentative plan is approved with phasing, the final plat for each phase shall be filed in accordance with DCC 17.24.020 through 17.24.110.**

FINDING: The Applicant was required to apply for Master Plan approval regardless of this section. However, the Applicant has also proposed a Tentative Plan that covers the entire Master Plan area and includes details of an eight-phase development. All Final Plats will be reviewed and processed in accordance with the procedures of DCC Title 17.

Section 17.16.100. Required Findings for Approval.

A tentative plan for a proposed subdivision shall not be approved unless the Planning Director or Hearings Body finds that the subdivision as proposed or modified would meet the requirements of this title and Titles 18 through 21 of this code and is in compliance with the comprehensive plan. Such findings shall include, but not be limited to, the following:

- A. The subdivision contributes to the orderly development and land use patterns in the area, and provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, special terrain features, agricultural and forest lands and other natural resources.**

FINDING: Compliance with Titles 17 and 19 of the Deschutes County Code is addressed in findings in this decision. The requirements of the Comprehensive Plan are codified within the Zoning Ordinance. Because no change to the Comprehensive Plan is sought by this application, conformance with Title 17 and 19 establishes conformance with the Comprehensive Plan.

Applicant, in its burden of proof, stated:

“Compliance with Deschutes County Code is addressed in this narrative and associated exhibits. The requirements of the Comprehensive Plan are codified within the Titles 17, 18, and 19, so compliance with these titles establishes compliance with the Comprehensive Plan.

Orderly Development and Land Use Patterns in the Area: The proposed Westgate subdivision was designed to meet the lot requirements of the Westside Transect Zone, with minimum 2.5-acre lots, while providing efficient roadway connectivity within the development and to adjacent developments. The elements of the proposed subdivision are clearly delineated for specific uses, including roadway tracts, individual lots, conservation areas, no build areas, and open space. This clear delineation, combined with CC&Rs, creates orderly development by which uses and responsibilities are known. The traffic circulation, water service and onsite septic systems have been planned for the entire development, to provide a comprehensive system for orderly development.

Preservation of Natural Features and Resources: Natural resources within or nearby Westgate include wildlife habitat, native vegetation, and topography. The cornerstone of this development

is the integration and implementation of wildlife habitat and wildfire mitigation plans, which include significant preservation of natural features and resources along the western border of the subject property, as discussed in great length below and in the associated Exhibits C and D. These plans identify resources (wildlife and wildlife habitat) and risks (habitat loss or wildfire) and strategies to preserve the resources by managing both together (e.g. appropriate management of vegetation to maintain wildlife habitat while still reducing fire fuel). The plans will be supported by the CC&Rs that require and enforce compliance with the Wildlife Habitat Management Plan and the Wildfire Mitigation Plan for the subdivision."

The Hearings Officer concurs with the Applicant's statements and finds the proposed development contributes to orderly development and natural features.

B. The subdivision would not create excessive demand on public facilities, services and utilities required to serve the development.

FINDING: Applicant, in its burden of proof, stated:

"The public facilities and services required by the proposed subdivision include water, sewage treatment, roads, electricity, natural gas, telephone service, and police and fire protection. These are addressed individually below.

Additionally, the Applicant was party to the Westside Infrastructure Group (WIG) and entered into a Development Agreement (WIG DA, Ordinance NS-2316, effective November 16, 2018) with the City of Bend that assessed the infrastructure impacts and mitigations to City infrastructure as a result of the combined westside development. Ordinance NS-2316 notes "[b]ecause the uses and density of the Properties are either prescribed by the BCP and BDC ...the overall off-site infrastructure impact as a result of development of the Properties can be reasonably determined and addressed. The purpose of this Agreement is to provide for the equitable allocation of these costs, and define development triggers and assignment of responsible parties for the construction of the required public improvements to fully mitigate off-site sewer, water and vehicular transportation infrastructure impacts from the development of the Properties subject to this Agreement." As such, the WIG Development Agreement analyzed all City water and street services for this master plan area. The terms of the Development Agreement commit the Applicants and the City of Bend to the terms of the agreement for a period of 15 years.

Water: *The Applicant proposes to provide domestic water to the proposed residential lots through the extension of City of Bend water service. The City provided a Will Serve letter, which is included in Exhibit A.*

Sewage Treatment: *The Applicant proposes to serve the residential lots with individual on-site private underground septic systems. At the time of tentative plan submittal, numerous septic submitted septic approvals have been received from Deschutes County Environmental Soils Division. The Applicant understands that septic approvals shall be received prior to submittal of final plat.*

Roads/Access: Site access will be provided through the extension and connection of McClain Drive and Sage Steppe. This north-south roadway connection will be dedicated to the public. The other proposed roadways in the subdivision are proposed to be private roadways, with ownership and maintenance by the homeowners association. The development's Site Traffic Report (STR) is included in Exhibit F and notes the following findings, demonstrating that the proposed development will not create excessive demands on the transportation system:

- The trips for 85 lots will be less than those previously assumed number for the South Transect property in the WIG study and associated WIG Agreement.
- Off-site mitigations and assessments to City of Bend facilities have already been determined with the WIG agreement. While this analysis did not focus on Deschutes County facilities no additional analysis should be required based on the access routes.

Electric: Electrical service will be provided by Pacific Power and a Will Serve letter is included in Exhibit B.

Telephone: A Will Serve letter from Century Link is included in Exhibit B.

Natural Gas: A Will Serve letter from Cascade Natural Gas is included in Exhibit B.

Police: Police protection will be provided by the Deschutes County Sheriff.

Fire Protection: Fire protection will be provided by the City of Bend Fire Department." [emphasis in original]

In regards to the public services aspect of these criteria, Staff (in the Staff Report) noted that the Bend Fire Department responded to the Notice of Application with several requirements for access and fire protection, which the Applicant will be required to meet. The Fire Department's comments are quoted in full earlier in this decision. The Fire Department's comments describe requirements related to construction activities and fire protections such as access during construction, gates, water supply, fire flow analysis, addresses, etc. Several other requirements from the Fire Department address timing that is more appropriate to be associated with final plat approval and are addressed separately in this decision. Staff, in the Staff report, suggested a condition of approval (set forth below) to ensure the public safety requirements submitted by the Bend Fire Department will be met. The Hearings Officer finds that with Staff's recommended condition this criterion can be met.

Fire District Approval: **Prior to issuance of building permit on individual lots**, the Applicant shall submit confirmation from the Bend Fire Department verifying the proposed lots, phase, or entire master plan area will conform to applicable Fire Code as it relates to the following requests from the Fire Department:

- Prior to the issuance of construction permits the Applicant shall provide to the City of Bend Fire Department a proposed plan for fire apparatus access to the construction site.
- Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200. A Knox® Key Switch shall be installed at all electronic gates.

- An approved water supply capable of supplying the required fire flow for fire protection shall be provided.
- Documentation of the available fire flow shall be provided to the fire code official prior to final approval of the water supply system. Provide the City of Bend Fire Department a fire flow analysis.
- New and existing buildings shall have approved address numbers.

C. *The tentative plan for the proposed subdivision meets the requirements of Oregon Revised Statutes Section 92.090.*

FINDING: The relevant provisions of ORS 92.090 and the proposal's compliance with those provisions are addressed in the findings below.

ORS 92.090

- (1) ***Subdivision plat names shall be subject to the approval of the county surveyor or, in the case where there is no county surveyor, the county assessor. No tentative subdivision plan or subdivision plat of a subdivision shall be approved which bears a name similar to or pronounced the same as the name of any other subdivision in the same county, unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name or unless the party files and records the consent of the party that platted the contiguous subdivision bearing that name. All subdivision plats must continue the lot numbers and, if used, the block numbers of the subdivision plat of the same name last filed. On or after January 1, 1992, any subdivision submitted for final approval shall not use block numbers or letters unless such subdivision is a continued phase of a previously recorded subdivision, bearing the same name, that has previously used block numbers or letters.***

FINDING: The Applicant requested the subdivision name Westgate. This name was submitted to the County Surveyor for review and the approval letter from the County Surveyor, dated May 30, 2019 is included as Exhibit I.

- (2) ***No tentative plan for a proposed subdivision and no tentative plan for a proposed partition shall be approved unless:***
- (a) ***The streets and roads are laid out so as to conform to the plats of subdivisions and partitions already approved for adjoining property as to width, general direction and in all other aspects unless the city or county determines it is in the public interest to modify the street or road pattern.***

FINDING: Applicant, in its burden of proof, stated:

"The proposed north-south public road will connect the existing McClain Drive to the north and Sage Steppe to the south. The proposed subdivision is bounded on the west by Shevlin Park and on the east by topography. As such, there are no through east-west streets. The north-south public

road has been designed to collector standards, through coordination with the County Roadway Department. In addition, the proposed multiuse path along this roadway was designed at eight feet wide, to match the existing width of the path along Sage Steppe."

The Deschutes County Road Department ("Road Department"), on July 23, 2019, submitted comments related to Applicant's proposal. The Road Department comments are included in the July 24, 2019 Staff Memo which is part of the record in this case. The Road Department, in its July 23, 2019 comments, acknowledged that the Applicant and Road Department had "coordinated their conceptual plans" but the Road Department then stated that it:

"did not indicate any acceptance of deviation from the private road standards in Deschutes County Code (DCC) 17.48.180 and 17.48A. Rather, Road Department staff stated to the Applicant prior to application submission that they would need to provide justification or mitigation for a variance to the County private road standard in their application burden of proof. Road Department staff acknowledges that the Applicant has provided a reason for the variance in their burden of proof, but the Road Department is neutral as to whether or not the Applicant has provided a sufficient reason."

The Road Department, in its July 23, 2019 comments, recommended conditions of approval. Staff, in the July 24, 2019 Staff Memo, requested the Hearings Officer consider the Road Department's recommended conditions.

The Hearings Officer incorporates the findings for DCC 17.48 and DCC 17.36.140 as additional findings for this approval criterion.

Wisco, on behalf of Applicant, testified at the Hearing related to the collector roadway extension of McClain Drive and Sage Steppe. Wisco utilized a Power Point presentation at the Hearing (Exhibit B). Wisco, in the Power Point presentation, provided a copy of a typical section of McClain Drive/Sage Steppe (Slide 12 of Exhibit B). Slide 12 showed a 28-foot wide roadway and an 8-foot wide multiuse path. Slide 13 of the Power Point presentation includes a portion of DCC 17.48A, Table B. Slide 13 indicates that minimum bikeway widths to be 8-feet. Slide 16 of the Power Point presentation is copy of a portion of Table B notes for DCC 17.48A. Footnote 1 of the Table B, as shown on Slide 16, indicates that while 10-feet is the standard width for multiuse paths 8-foot paths are acceptable "where long-term usage is expected to be low, and with proper horizontal and vertical alignment to assure good sight distances."

Wisco, on Slide 15 of the Power Point presentation, noted that DCC 19.22.060 requires compatibility with surrounding development. Wisco, in the Power Point presentation, noted that Sage Steppe road in the adjacent Tree Farm development includes 8-foot paths (citing low volume of usage). Wisco concluded, on Slide 15 of the Power Point presentation, that the present proposal for an 8-foot path matches the existing path in the Tree Farm development.

Wisco, on Slides 16-20 of the Power Point presentation (Exhibit B), described the private roads (not the extension of McClain Drive/Sage Steppe) included in the Applicant's proposed subdivision (See also pages 46-47 of the Applicant's Burden of Proof statement). The private roads are proposed to

be 24-feet of pavement (4-feet greater than the minimum code requirement) but with no multiuse path. Wisco, on Slide 16 of the Power Point presentation stated that the private roads would only serve the parcels abutting the private roads and not serve other origins/destinations.

Staff, in the Staff Report, concurred with the Applicant's statements and concluded that the proposed development would conform to the **street and road patterns** in the area. The Hearings Officer finds the proposed "collector" roadway (extension of McClain Drive/Sage Steppe) will meet County standards. The Hearings Officer finds that the private roads will meet the pavement width standard but not technically the "path" standard. The Hearings Officer agrees with Wisco's statements that the private roads will experience low volume of local traffic and will not serve other origins or destinations. The Hearings Officer finds, for the purpose of this approval criterion, the collector roadway (extension of McClain Drive and Sage Steppe) and the private roads are laid out so as to conform to the plats of subdivisions and partitions already approved for adjoining property as to width and general direction. The Hearings Officer finds that with a condition requiring multiuse paths along the private roads this approval criterion will be met. (See findings for DCC 17.36.140 and 17.48).

- (b) *Streets and roads held for private use are clearly indicated on the tentative plan and all reservations or restrictions relating to such private roads and streets are set forth thereon.***

FINDING: The proposed streets and roads for private use are clearly indicated on the Tentative Plan. The Hearings Officer finds this criterion is met.

- (c) *The tentative plan complies with the applicable zoning ordinances and regulations and the ordinances and regulations adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the plan is situated.***

FINDING: This decision identifies applicable zoning ordinances and evaluates compliance with those ordinances. The Hearings Officer finds that the Tentative Plan, as conditioned, complies with the applicable zoning ordinances and regulations, and the ordinances and regulations adopted under ORS 92.044.

- (3) *No plat of a proposed subdivision or partition shall be approved unless:***
- (a) *Streets and roads for public use are dedicated without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public or private utilities.***
 - (b) *Streets and roads held for private use and indicated on the tentative plan of such subdivision or partition have been approved by the city or county.***
 - (c) *The subdivision or partition plat complies with any applicable zoning ordinances and regulations and any ordinance or regulation adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the subdivision or partition plat is situated.***
 - (d) *The subdivision or partition plat is in substantial conformity with the provisions of the tentative plan for the subdivision or partition, as approved.***

- (e) ***The subdivision or partition plat contains a donation to the public of all sewage disposal and water supply systems, the donation of which was made a condition of the approval of the tentative plan for the subdivision or partition plat.***
- (f) ***Explanations for all common improvements required as conditions of approval of the tentative plan of the subdivision or partition have been recorded and referenced on the subdivision or partition plat.***

FINDING: The proposed roads will consist of one public right-of-way and all other roads will be private roads. All roads will be reviewed by the County Road Department prior to final plat approval. The proposal includes the right-of-way dedication associated with the extension of McClain Drive. Compliance with the zoning ordinance is addressed in the findings in this decision. Sections (a), (d), (e), and (f) of this section establish requirements for final plat review and have been added as conditions of approval to comply with this statute section.

Road Approval: Prior to final plat approval of each phase, streets and roads held for private use and indicated on the tentative plan shall be approved by the County Road Department. Streets and roads for public use shall be dedicated to the public without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public or private utilities.

Conformity to Tentative Plan: Prior to final plat approval of each phase, the subdivision final plat shall be in substantial conformity with the provisions of the tentative plan for the subdivision, as approved.

Explanations: Prior to final plat approval of each phase, explanations for all common improvements required as conditions of approval of the tentative plan of the subdivision shall be recorded and referenced on the subdivision plat.

- (4) ***Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:***
 - (a) ***A certification by a city-owned domestic water supply system or by the owner of a privately owned domestic water supply system, subject to regulation by the Public Utility Commission of Oregon, that water will be available to the lot line of each and every lot depicted in the proposed subdivision plat;***
 - (b) ***A bond, irrevocable letter of credit, contract or other assurance by the subdivider to the city or county that a domestic water supply system will be installed by or on behalf of the subdivider to the lot line of each and every lot depicted in the proposed subdivision plat; and the amount of any such bond, irrevocable letter of credit, contract or other assurance by the subdivider shall be determined by a registered professional engineer, subject to any change in such amount as determined necessary by the city or county; or***
 - (c) ***In lieu of paragraphs (a) and (b) of this subsection, a statement that no domestic water supply facility will be provided to the purchaser of any lot depicted in the proposed subdivision plat, even though a domestic water supply source may exist.***

A copy of any such statement, signed by the subdivider and indorsed by the city or county, shall be filed by the subdivider with the Real Estate Commissioner and shall be included by the commissioner in any public report made for the subdivision under ORS 92.385 (Examination). If the making of a public report has been waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the subdivider shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser of the first written agreement for the sale of the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken.

FINDING: The Applicant proposed the City of Bend's city-owned domestic water supply system to serve all lots. The Applicant included a "will-serve" letter from the City (Attachment A to the Burden of Proof – Application) indicating the willingness of the City to provide such service to the Subject Property. However, the letter is not a "certification [...] that water will be available to the lot line of each and every lot depicted in the proposed subdivision plat". The Hearings Officer finds that with the following condition of approval this criterion can be met.

Domestic Water Supply Certification: **Prior to final plat approval of each phase**, the Applicant shall provide to the County a certification by the city-owned domestic water supply system that water will be available to the lot line of each and every lot depicted in the proposed subdivision plat.

- (5) ***Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:***
- (a) ***A certification by a city-owned sewage disposal system or by the owner of a privately owned sewage disposal system that is subject to regulation by the Public Utility Commission of Oregon that a sewage disposal system will be available to the lot line of each and every lot depicted in the proposed subdivision plat;***
 - (b) ***A bond, irrevocable letter of credit, contract or other assurance by the subdivider to the city or county that a sewage disposal system will be installed by or on behalf of the subdivider to the lot line of each and every lot depicted on the proposed subdivision plat; and the amount of such bond, irrevocable letter of credit, contract or other assurance shall be determined by a registered professional engineer, subject to any change in such amount as the city or county considers necessary; or***
 - (c) ***In lieu of paragraphs (a) and (b) of this subsection, a statement that no sewage disposal facility will be provided to the purchaser of any lot depicted in the proposed subdivision plat, where the Department of Environmental Quality has approved the proposed method or an alternative method of sewage disposal for the subdivision in its evaluation report described in ORS 454.755 (Fees for certain reports on sewage disposal) (1)(b). A copy of any such statement, signed by the subdivider and indorsed by the city or county shall be filed by the subdivider with the Real Estate***

Commissioner and shall be included by the commissioner in the public report made for the subdivision under ORS 92.385 (Examination). If the making of a public report has been waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the subdivider shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser of the first written agreement for the sale of the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken.

FINDING: The Applicant proposed onsite subsurface sewage disposal systems on individual lots. The Hearings Officer finds that with the following condition of approval this approval criterion can be met.

Sewage Disposal Statement: Prior to final plat approval of each phase, a statement that no sewage disposal facility will be provided to the purchaser of any parcel depicted in the proposed partition plat, where the Department of Environmental Quality has approved the proposed method or an alternative method of sewage disposal for the subdivision in its evaluation report described in ORS 454.755 (Fees for certain reports on sewage disposal) (1)(b). A copy of any such statement, signed by the Applicant and indorsed by the County shall be filed by the Applicant with the Real Estate Commissioner and shall be included by the commissioner in the public report made for the subdivision under ORS 92.385 (Examination). If the making of a public report has been waived or the partition is otherwise exempt under the Oregon Subdivision Control Law, the Applicant shall comply with the applicable provisions of ORS 92.090(5)(c).

- (6) *Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of subdivision or partition located within the boundaries of an irrigation district, drainage district, water control district, water improvement district or district improvement company shall be approved by a city or county unless the city or county has received and accepted a certification from the district or company that the subdivision or partition is either entirely excluded from the district or company or is included within the district or company for purposes of receiving services and subjecting the subdivision or partition to the fees and other charges of the district or company.***

FINDING: The Subject Property is not located within an irrigation district or any other district mentioned in this ORS section. The Hearings Officer finds this approval criterion does not apply.

- D. *For subdivision or portions thereof proposed within a Surface Mining Impact Area (SMIA) zone under DCC Title 18, the subdivision creates lots on which noise or dust sensitive uses can be sited consistent with the requirements of DCC 18.56, as amended, as demonstrated by the site plan and accompanying information required under DCC 17.16.030.***

FINDING: The Subject Property is not within a Surface Mining Impact Area Zone. The Hearings Officer finds this approval criterion does not apply.

E. The subdivision name has been approved by the County Surveyor

FINDING: This requirement has already been addressed under subsection (C) above, under ORS 92.090(1).

Section 17.16.105. Access to Subdivisions.

No proposed subdivision shall be approved unless it would be accessed by roads constructed to County standards and by roads under one of the following conditions:

- A. Public roads with maintenance responsibility accepted by a unit of local or state government or assigned to landowners or homeowners association by covenant or agreement; or**
- B. Private roads, as permitted by DCC Title 18, with maintenance responsibility assigned to landowners or homeowners associations by covenant or agreement pursuant to ORS 105; or**
- C. This standard is met if the subdivision would have direct access to an improved collector or arterial or in cases where the subdivision has no direct access to such a collector or arterial, by demonstrating that the road accessing the subdivision from a collector or arterial meets relevant County standards that maintenance responsibility for the roads has been assigned as required by this section.**

FINDING: The proposed primary access will be a public road constructed to the County's collector standards, connecting McClain Drive to Sage Steppe. All other roads within the subdivision will be private roads. Maintenance of all roads within the subdivision will be assigned to the Homeowners Association by the CC&Rs. Access to the subdivision will be from the existing McClain Drive (city local street) which leads to Shevlin Park Road (city arterial road) from the north, and Sage Steppe (public rural local road) which leads to Ridgeline Drive (private rural local road), to Tree Farm Drive (private rural local road), and finally to Skyliners Road (forest highway) to the south. The Hearings Officer finds the approval criteria under subsections (a) and (b) are met.

Section 17.16.115. Traffic Impact Studies.

A. The traffic studies will comply with DCC 18.116.310.

FINDING: In response to this criterion, the Applicant's burden of proof stated:

"The site is expected to generate more than 200 weekday daily trips and more than 20 peak hour trips. Per DCC 18.116.310(C)(3)(c), the minimum thresholds for a traffic impact analysis (TIA) are exceeded based on the trip generation. The TIA was completed for this development along with other transect and UGB expansion areas through the Westside Infrastructure Group (WIG) 2018.

The two Westside Transect Areas along with other projects on the west side of Bend are anticipated to have impacts on the transportation facilities in the area. The property owners formed the WIG to work with the City and collaborate on the identification of the transportation needs for the desired development. As a result, multiple regional projects were identified, some of which would be City projects and others to be funded by the WIG. The contribution towards off-site mitigations for Westgate and the documentation of this process has been established in the "Westside Infrastructure Group Proportionate Sharing – Transportation Methodology and Findings" Memorandum dated June 28, 2018 prepared by Kittelson & Associates, Inc. While this work effort primarily focused on City of Bend transportation infrastructure, it is the Applicant's understanding that pending additional direction from Deschutes County only a Site Traffic Report (STR) is required for the Westgate Subdivision. The Applicant has submitted an STR, which is included in Exhibit F. This STR was prepared by a professional engineer at Transight Consulting, in compliance with DCC 18.116.310, and includes all the required minimum study requirements of DCC 18.116.310(F), including a vicinity map, trip generation forecast, trip distribution and assignment, safety analysis, and a description of the proposed development and surrounding land uses."

The Senior Transportation Planner submitted comments regarding the traffic study, repeated here for ease of reference:

"The applicant has submitted a traffic study dated June 18, 2019, which demonstrates the current proposal is consistent with the traffic analysis done for the larger plan amendment/zone change approved under 247-18-612-ZC/613-PA/614-TA for the entire 737 acres. The mitigations required for that change from Urban Area Reserve (UAR-10) to WTZ were resolved in that 2018 decision. The current proposal does not result in any additional deficiencies in the roadway system."

The Hearings Officer finds the submitted traffic study satisfies DCC 18.116.310, thus satisfying this criterion.

Chapter 17.24, Final Plat.

Section 17.24.060. Required Information.

In addition to that required for the tentative plan or otherwise specified by law, the following information shall be shown on the submitted plat:

...

- E. The exact location and width of streets and easements intercepting the boundary of the tract.***
- F. Tract, lot or parcel boundary lines and street rights of way and centerlines, with dimensions, bearing or deflection angles, radii, arcs, points of curvature and tangent bearings. Normal high water lines for any creek, bay or other body of water. Tract boundaries and street bearings shall be shown to the nearest second with the basis of bearings. Distances shall be shown to the nearest 0.01 feet.***
- G. Streets. The width of the streets being dedicated and the curve data shall be based on the street centerline. In addition to the centerline dimensions, the radius and central angle shall be indicated, together with the long chord distance and bearing.***

- H. Easements. The location, dimensions and purpose of all recorded and proposed public easements shall be shown on the plat along with the County Clerk's recording reference if the easement has been recorded with the County Clerk. All such easements shall be denoted by fine dotted lines and clearly identified. If an easement is not of record, a statement of the grant of easement shall be given. If the easement is being dedicated by the plat, it shall be properly referenced in the owner's certificate of dedication.**

FINDING: This section provides information on requirements for submittal of the final plat. Within this section and DCC 17.24.070 are criteria relevant to conditions of approval typically received from the County Road Department. The Road Department submitted, on July 23, 2019, a memorandum/letter to Staff. The Road Department July 23, 2019 memorandum/letter recommended the following conditions of approval:

"Prior to construction of public and private road improvements:

- Applicant shall submit road improvement plans to the Road Department for approval prior to commencement of construction pursuant to DCC 17.40.020 and 17.48.060. The roads shall be designed to the minimum standard for a private road pursuant to 17.48.160, 17.48.180, and 17.48A or pursuant to the master plan upon approval. Road improvement plans shall be prepared in accordance with all applicable sections of DCC 17.48.

Prior to final plat approval by Road Department:

- Applicant shall complete road improvements according to the approved plans and all applicable sections of DCC 17.48. Improvements shall be constructed under the inspection of a registered professional engineer consistent with ORS 92.097 and DCC 17.40.040. Upon completion of road improvements, applicant shall provide a letter from the engineer certifying that the improvements were constructed in accordance with the approved plans and all applicable sections of DCC 17.48.
- Maintenance of all public and private roads, including multiuse paths, shall be assigned to a home owners association by covenant pursuant to DCC 17.16.040, 17.16.105, 17.48.160(A), and 17.48.180(E). Applicant shall submit covenant to Road Department for review and shall record covenant with the County Clerk upon Road Department approval. A copy of the recorded covenant shall be submitted to the Community Development Department prior to final plat approval.
- All easements of record or existing rights of way shall be noted on the final plat pursuant to DCC 17.24.060(E), (F), and (H).
- The surveyor preparing the plat shall, on behalf of Applicant, submit information showing the location of the existing roads in relationship to the rights of way to Deschutes County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights of way. If research reveals that inadequate right of way exists or that the existing roadway is outside of the legally established or dedicated right of way, additional right of way will be dedicated as directed by Deschutes County Road Department to meet the applicable requirements of DCC Title 17 or other County road standards. This condition is pursuant to DCC 17.24.060(E), (F), and (G), and 17.24.070(E)(8).

- Applicant shall submit as-constructed improvement plans to Road Department pursuant to DCC 17.24.070(E)(1).
- Applicant shall submit plat to Road Department for approval pursuant to DCC 17.24.060(R)(2), 100, 110 and 140.”

Staff included, in the Staff Report (issued prior to the July 23, 2019 Road Department memorandum/letter), the following suggested conditions:

Existing Easements and Rights-of-Way: **Prior to final plat approval of each phase**, the Applicant shall note all easements of record and existing rights-of-way on the final plat, in conformance with DCC 17.24.060.

Location of Roads: **Prior to final plat approval of each phase**, the surveyor or engineer submitting the plat shall submit information showing the location of the existing roads in relation to the roads rights-of-way, on behalf of the Applicant to the County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights-of-way. In no case shall a road improvement be located outside of a dedicated road right-of-way. If research reveals that inadequate right-of-way exists or that the existing roadway is outside of the legally established or dedicated right-of-way, additional right-of-way will be dedicated as directed by the Deschutes County Road Department to meet current County Standards.

The Hearings Officer finds that the Road Department and Staff recommended conditions are generally consistent. The Hearings Officer finds that with Hearings Officer imposed conditions of approval that meet the goals of those proposed by the Road Department and Staff recommended conditions this approval criterion can be met.

Section 17.24.120. Improvement Agreement.

- A. *The subdivider may, in lieu of completion of the required repairs to existing streets and facilities, and improvements as specified in the tentative plan, request the County to approve an agreement between himself and the County specifying the schedule by which the required improvements and repairs shall be completed; provided, however, any schedule of improvements and repairs agreed to shall not exceed on[e] year from the date the final plat is recorded, except as otherwise allowed by DCC 17.24.120(F) below. The agreement shall also provide the following:***

...

FINDING: The Applicant initially did not request review and approval of an Improvement Agreement. However, in Applicant’s proposed modification to Staff recommended conditions 16 and 21 the Applicant raised the possibility of one or more improvement agreements. The Hearings Officer modified Applicant’s proposed language for conditions 16 and 21 to include review and approval by Deschutes County Community Development and County Counsel to assure such agreements meet the requirements of DCC 17.24.120. The Hearings Officer finds that with a

condition that any improvement agreement(s) proposed by Applicant assuring the satisfaction of the requirements of DCC 17.24.120 this approval criterion will be met.

Chapter 17.36, Design Standards.

Section 17.36.020. Streets.

- A. *The location, width and grade of streets shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system for all modes of transportation, including pedestrians, bicycles and automobiles, with intersection angles, grades, tangents and curves appropriate for the traffic to be carried, considering the terrain. The subdivision or partition shall provide for the continuation of the principal streets existing in the adjoining subdivision or partition or of their property projection when adjoining property which is not subdivided, and such streets shall be of a width not less than the minimum requirements for streets set forth in DCC 17.36.***

FINDING: The proposed street designs, including the location, width, and grades for the road within the proposed subdivision, are shown on the submitted Tentative Plan materials. The vehicular, bicycle and pedestrian traffic is north-south directional. The Subject Property is bounded by Shevlin Park to the west and by some steep topography to the east. No east-west through streets are proposed nor are any necessary. The north-south connection between Sage Steppe and McClain Drive is proposed to be constructed to County collector standards with 60-foot right of way with a separated multiuse path, as the direct route through the proposed development. With the exception of Shevlin Park property to the west, all adjoining properties are either developed with subdivisions or PUDs, or are in the planning stages for subdivision development.

In regards to the “public convenience and safety” the Staff, in the Staff Report, noted that Bend Fire Department responded to the Notice of Application with several requirements for access and road design, which the Applicant will be required to meet. The Fire Department’s comments are quoted in full above in this decision and describe requirements for access, fire hydrant locations, road surfacing, fire flow for fire protection (water), parking restrictions near fire hydrants, parking restrictions along fire access roads, etc. Several other requirements from the Fire Department address timing. The Hearings Officer finds that the timing issues are better addressed at the time of issuance of permits and are addressed separately in this decision. Staff, in the Staff Report, suggested a condition of approval (set forth below) to ensure the public safety requirements submitted by the Bend Fire Department will be met. The Hearings Officer agrees with Staff’s comments and recommended condition of approval.

Fire District Approval: Prior to final plat approval of each phase, the Applicant shall submit confirmation from the Bend Fire Department verifying the proposed phase or entire master plan will conform to applicable Fire Code as it relates to the following requests from the Fire Department:

- Provide the City of Bend Fire Department a proposed site plan illustrating compliant fire apparatus access.
- Approved signs or other approved notices or markings that include the words NO PARKING-FIRE LANE shall be provided for fire apparatus roads to prohibit parking on both sides of fire lanes 20 to 26 feet wide and on one side of fire lanes more than 26 feet to 32 feet wide.
- Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus (60,000 pounds GVW) and shall be surfaced (asphalt, concrete or other approved driving surface) as to provide all weather driving capabilities.
- Provide a site plan to the City of Bend Fire Department illustrating a secondary access point.
- Provide the City of Bend Fire Department a site plan illustrating the quantity and locations of fire hydrants.
- Provide a site plan that illustrates any parking restrictions.

B. Streets in subdivisions shall be dedicated to the public, unless located in a destination resort, planned community or planned or cluster development, where roads can be privately owned. Planned developments shall include public streets where necessary to accommodate present and future through traffic.

FINDING: The proposed extension of McClain Drive will be a public right-of-way, but maintained by the subdivision home owner association. As a master-planned subdivision, the application is requesting the remainder of internal roads be private roads. The Hearings Officer finds these criteria can be met.

Section 17.36.030. Division of Land.

Any proposal for a condominium conversion which results in a division of real property shall comply with the provisions of DCC Title 17 and ORS 92.

FINDING: No proposal for a condominium conversion is included in this application.

Section 17.36.040. Existing Streets.

Whenever existing streets, adjacent to or within a tract, are of inadequate width to accommodate the increase in traffic expected from the subdivision or partition or by the County roadway network plan, additional rights of way shall be provided at the time of the land division by the applicant. During consideration of the tentative plan for the subdivision or partition, the Planning Director or Hearings Body, together with the Road Department Director, shall determine whether improvements to existing streets adjacent to or within the tract, are required. If so determined, such improvements shall be required as a condition of approval for the tentative plan. Improvements to adjacent streets shall be required where traffic on such streets will be directly affected by the proposed subdivision or partition.

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

"There are no existing streets within the subject property. Access to the subject property will be provided through McClain Drive on the north and Sage Steppe on the south. Sage Steppe was recently completed, constructed to County standards, following the County's approval of planning file PZ-247-14-000243-TP. The existing McClain Drive to the north is currently inadequate, however, the development to the north (Pahlisch Homes, Skyline West) fronts on McClain Drive and has plans to improve the street to City standards, prior to the construction of the Westgate project's connection to McClain Drive."

The connection between the existing McClain Drive right-of-way and the proposed extension of McClain Drive through the Subject Property is separated by a parcel owned by the same owner as the Subject Property and is within the City of Bend's Urban Growth Boundary. The Applicant submitted information for the adjacent parcel (Tax Lot 1711260000400) that is currently being reviewed for a subdivision and associated construction of McClain Drive. This access connection is approximately 200 feet in length but is critical for access to and through the Subject Property. As of the date of this decision there is no evidence in the record indicating the City of Bend approval or other disposition of the roadway issue over Tax Lot 1711260000400.

Staff, in the Staff Report, suggested the following condition of approval:

Adjacent McClain Drive Improvement: **Prior to final plat approval of the first phase**, the Applicant shall submit evidence that McClain Drive on Map and Tax Lot 1711260000400 has been approved by the City of Bend or otherwise constructed as a legal right-of-way and improved to City of Bend standards for streets.

Staff, in the July 24, 2019 Staff Memo, expanded on its rationale underlying the condition of approval noted above. Staff, in the July 24, 2019 Staff Memo, stated:

"The connection between the existing McClain Drive right-of-way and the proposed extension of McClain Drive through the subject property is separated by a parcel located within Bend city limits and is owned by the same owners as the subject property. The applicant has applied for master plan approval for a subdivision on that lot, but staff understands that the review of that master plan has not been completed at this time. This access connection is approximately 200 feet in length but is critical for access to and through the subject property. Staff's intention with the condition was two-part. Emergency access is the primary concern, especially when residential construction begins. The second concern is a long-term assurance that the subdivision will have two access points, as required by the Bend Fire Department in its comments and in DCC 17.48.160(D), in the event that full development of either the subject subdivision or the adjacent subdivision in the City is interrupted or abandoned. It was not staff's intention to impose needless delay with this suggested condition of approval."

On July 23, Tammy Wisco submitted the following comments and suggested a modification to the condition of approval:

Adjacent McClain Drive Improvement: Prior final plat approval of the first phase, the applicant shall submit evidence that McClain Drive on Map and Tax Lot 1711260000400 has been either constructed to City of Bend standards, or the applicant has submitted an improvement agreement and performance assurance for such construction. During all phases, fire access shall be provided as required by the Bend Fire Department.

I removed the reference to city approvals and dedication of right-of-way, as that could be a very timely process, given that those applications were only recently submitted to the City. But, Kevin is planning to construct that segment in the first phase of Westgate anyway.'

Staff believes this modified condition of approval can substitute for the original condition #16, as it addresses the concerns regarding fire and long-term access."

The Hearings Officer concurs with the Staff comments quoted above. The Hearings Officer finds that Staff's stated goals of "emergency access" and "two-access points" are relevant and important. The Hearings Officer also agrees with Wisco's above quoted proposed substitute condition #16. The Hearings Officer finds that Wisco's proposed condition language should also include language assuring that the form of the improvement agreement and performance assurance are satisfactory to the Deschutes County Community Development Department and County Counsel. The Hearings Officer finds that with a condition of approval (Wisco's substituted condition #16 language, including an assurance the form of the improvement agreement and performance assurance is satisfactory to the County) this criterion can be met.

Section 17.36.050. Continuation of Streets.

Subdivision or partition streets which constitute the continuation of streets in contiguous territory shall be aligned so that their centerlines coincide.

FINDING: The proposed extension of McClain Drive and Sage Steppe will be required to be aligned so that their centerlines coincide. The Hearings Officer finds the Tentative Plan materials indicate this will occur. The Hearings Officer finds that with approval of the proposed Tentative Plan this criterion will be met.

Section 17.36.060. Minimum Right of Way and Roadway Width.

The street right of way and roadway surfacing widths shall be in conformance with standards and specifications set forth in DCC 17.48. Where DCC refers to street standards found in a zoning ordinance, the standards in the zoning ordinance shall prevail.

FINDING: The Hearings Officer adopts the findings for ORS 92.090 (2), as set forth earlier in this decision, as additional findings for this approval criterion. The Hearings Officer also adopts the findings for DCC 17.48.140, as set forth later in this decision, as additional findings for this approval criterion.

The relevant street surfacing width standards of DCC 17.48, Table A for a collector road are 60' ROW, 28'-46' paved surface with footnote (9) stating:

"The larger of the two widths is necessary if a shoulder bikeway is required (4' for collector and 5' for arterial) 11' travel lane, 3'-5' paved shoulder, and 2' gravel shoulder."

Footnote (23) for multiuse paths states:

"The minimum width is 8 ft. However, 8 ft. wide multiuse paths are not recommended in most situations because they may become over-crowded. They should only be constructed as short connectors, or where long term usage is expected to be low, and with proper horizontal and vertical alignment to assure good sight distances. 10 ft is the standard width for a two-way multiuse path but they should be 12 ft wide in areas with high mixed-use. Optimum width should be based on the relative use by cyclists and pedestrians. High use by skaters may also require greater width"

For the collector road (extension of McClain Drive and Sage Steppe) the Applicant proposed a 60-foot ROW, 28-foot paved surface, 14-foot travel lane, 2-foot paved shoulder, 6-foot gravel shoulder/swale, and a separated 8-foot paved multiuse path. The relevant street surfacing width standards of DCC 17.48, Table A for a private road are 20-foot or 28-foot paved surface with footnote (8) stating:

"20' allowed for cul-de-sacs and roads with low anticipated traffic volumes as long as separate multiple use paths are provided. 28' width required (including the required 4' striped shoulder bikeway in each direction) for circulator and primary subdivision access roads and other roads when separate multiple use paths are not provided."

The Applicant proposed private roads with a 24-foot paved width, 14-foot travel lanes, 3-foot gravel shoulders, and a paved 8-foot multiuse path within easement areas. Staff noted, in the Staff Report, that the Tentative Plan materials showed the paved multiuse path only being present on short portions of the private roads, specifically on "Road A" from the southeast corner of Lot 1 to the trail easement between Lots 3 and 4. The Applicant's July 16, 2019 Clarification Memo indicated the multiuse path is not intended for the section on "Road D" along the southern boundary of Lot D, despite being shown on the Tentative Plan materials.

The Deschutes County Senior Transportation Planner submitted comments with concerns about these proposed widths and comments from the Road Department were expected prior to the Hearing (but were not available as of the date of the Staff Report). The Senior Transportation Planner stated:

"Deschutes County Code 17.48.050 and its Table A sets a paved width of 20' or 28' for private roads; for a 20' foot private road multiuse paths are required for narrower width. DCC 17.48.140(B)(2) states multiuse paths have a standard width of 10' and 12' feet if the multiuse path will be subject to high volumes of multiple users. The applicant is proposing a 24' width for the private roads, but apparently only for the short sections which lead to natural trails; the remaining

portions of private roads will be 20' with no multiuse path. Staff is uncertain if the code allows this hybrid. The applicant posits this is consistent to what the County approved in the adjacent Miller Tree Farm under 247-14-000243-TP.

The proposed collector, an extension of McClain Drive to Sage Steppe, will be a public road, and also have an 8' multiuse path based on anticipated low volumes of usage and the road's low speed. While staff can understand the rationale for the reduced width on a private road that will see little to no through traffic, staff does not support similar reduced widths for a north-south collector that ultimately will provide a critical link between Johnson Road/Shevlin Park Road to the north and Skyliners Road and Century Drive, aka Cascade Lakes Highway, to the south."

Wisco, at the Hearing, testified and submitted a Power Point presentation addressing this approval criterion and the County Staff comments quoted above (See Power Point presentation Slides 10, 13, 14, 15, 16, 17, 18, 19, 20 and 21). Wisco stressed, in her testimony, that the extension of McClain Drive and Sage Steppe would be a County "collector" roadway. Wisco indicated, during her testimony and Power Point presentation, that the extension of McClain Drive and Sage Steppe, are proposed to meet County collector roadway width standards. Wisco, in the Power Point presentation (Slide 14), stated that the McClain Drive/Sage Steppe multiuse path met the "minimum" width standards (DCC 17.48 A, Table B).

As noted in the Hearings Officer's findings for ORS 92.090 (2) the proposed multiuse path along the extension of McClain Drive and Sage Steppe was expected to experience low use volume. Bend Parks and Recreation District ("BPRD"), through Hearing testimony of Quinn Keever (see also July 24, 20019 written record submission), agreed that an 8-foot hard surface trail (off-set from the road) was acceptable along the extension of McClain Drive and Sage Steppe.

Applicant proposed 24 feet of pavement for the private roads (not the extension of McClain Drive and Sage Steppe - aka referred to as Roads A, B, C and D on the Site Plan). Wisco testified, at the Hearing, that the proposed 24-foot pavement for private roads is 4-feet greater than the minimum (See Power Point presentation Slides 19 & 20). Applicant proposed no multiuse paths on the private roads excepting for Road A (connecting to path to Shevlin Park). BPRD requested, in addition to the section of multiuse path between the collector and path on Road A, that the Applicant construct an 8-foot hard surface path on Road D between the collector and proposed nature trail running north from Road D (between proposed lots 72 and 73).

Wisco, in her Hearing testimony and Power Point presentation (See page 21), requested the Hearings Officer approve the proposed private streets without requiring a separate path (excepting for the path connecting the McClain Drive and Sage Stepp, along private Road A, to the proposed nature trail). The Hearings Officer finds, for the purposes of this approval criterion, that proposed collector (connecting McClain Drive and Sage Steppe) and private roads are reasonable and appropriate. The Hearings Officer specifically finds that the roadway widths (including pavement areas) for both the collector and private roads meets relevant County standards and also this approval criterion. The Hearings Officer specifically finds that the proposed collector multiuse path meets relevant County standards and this approval criterion. The Hearings Officer will address the multiuse path on private roads in the findings for DCC 17.48.140.

Section 17.36.070. Future Resubdivision.

Where a tract of land is divided into lots or parcels of an acre or more, the Hearings Body may require an arrangement of lots or parcels and streets such as to permit future re-subdivision in conformity to the street requirements and other requirements contained in DCC Title 17.

FINDING: All proposed lots are more than one acre in size. Staff, in the Staff Report, stated that it does not anticipate the need for rearrangement for future re-subdivision as the newly-created WTZ Zone has a minimum acreage size of 2.5 acres. The Hearings Officer concurs with Staff's comments related to this approval criterion.

Section 17.36.080. Future extension of streets.

When necessary to give access to or permit a satisfactory future division of adjoining land, streets shall be extended to the boundary of the subdivision or partition.

FINDING: The Subject Property is surrounded by publicly-owned lands or properties that have already been or are in the process of being subdivided. The proposal includes a north-south through street connecting Sage Steppe to McClain Drive. The Hearings Officer finds this approval criterion will be met.

Section 17.36.100. Frontage Roads.

If a land division abuts or contains an existing or proposed collector or arterial street, the Planning Director or Hearings Body may require frontage roads, reverse frontage lots or parcels with suitable depth, screen planting contained in a non-access reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic. All frontage roads shall comply with the applicable standards of Table A of DCC Title 17, unless specifications included in a particular zone provide other standards applicable to frontage roads.

FINDING: The Hearings Officer finds that no frontage road or reverse frontage lots are required.

Section 17.36.110. Streets Adjacent to Railroads, Freeways and Parkways.

When the area to be divided adjoins or contains a railroad, freeway or parkway, provision may be required for a street approximately parallel to and on each side of such right of way at a distance suitable for use of the land between the street and railroad, freeway or parkway. In the case of a railroad, there shall be a land strip of not less than 25 feet in width adjacent and along the railroad right of way and residential property. If the intervening property between such parallel streets and a freeway or a parkway is less than 80 feet in width, such intervening property shall be dedicated to park or thoroughfare use. The intersections of such parallel streets, where they intersect with streets that cross a

railroad, shall be determined with due consideration at cross streets of a minimum distance required for approach grades to a future grade separation and right-of-way widths of the cross street.

FINDING: The Hearings Officer finds that the Subject Property is not adjacent to a railroad, freeway, or parkway. The Hearings Officer finds this approval criterion is not applicable to the proposed subdivision.

Section 17.36.120. Street Names.

Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street in a nearby city or in the County. Street names and numbers shall conform to the established pattern in the County and shall require approval from the County Property Address Coordinator.

FINDING: No specific names have been proposed for the private roads. The Applicant requested the extension of McClain Drive to be named McClain Drive as well. The Deschutes County 911 District submitted comments, in part stating:

“9-1-1 would like to request that McClain Dr end at the intersection with Road ‘D’ and Road ‘A’. At this intersection, Sage Steppe Dr would begin and continue south to the existing blocks in the Tree Farm subdivision. This request is to avoid any potential addressing conflicts that could result in the delayed response of emergency services. If this is agreed upon, we would ask that this is made clear on the site plan and annotated correctly on the subdivision plat.”

Staff, in the Staff Report, noted there are two roads labeled “Road B” on the Tentative Plan materials, but that naming these different road names at the time of final plat should resolve this conflict. Staff recommended the following condition of approval.

Street Names: Prior to final plat approval of each phase, no street name shall be used which will duplicate or be confused with the name of an existing street in a nearby city or in the County. Street names and numbers shall conform to the established pattern in the County and shall require approval from the County Property Address Coordinator. The north-south collector road shall be named McClain Drive north of the intersection of “Road A” and “Road D”, and shall be named Sage Steppe south of the same intersection.

The Hearings Officer concurs with the Deschutes County 911 District submitted comments and Staff’s responsive comments. The Hearings Officer finds that with the Staff recommended condition this criterion can be met.

Section 17.36.130. Sidewalks.

A. Within an urban growth boundary, sidewalks shall be installed on both sides of a public road or street and in any special pedestrian way within the subdivision or

partition, and along any collectors and arterials improved in accordance with the subdivision or partition.

- B. *Within an urban area, sidewalks shall be required along frontage roads only on the side of the frontage road abutting the development.***
- C. *Sidewalk requirements for areas outside of urban area are set forth in section 17.48.175. In the absence of a special requirement set forth by the Road Department Director under DCC 17.48.030, sidewalks and curbs are never required in rural areas outside unincorporated communities as that term is defined in Title 18.***

FINDING: The proposed subdivision is not located within an Urban Growth Boundary or in any of the Urban Unincorporated Communities included within DCC 17.48.175. The Director of the Road Department has not applied additional requirements for sidewalks as allowed under DCC 17.48.030. The Hearings Officer finds that sidewalks are not required.

Section 17.36.140. Bicycle, Pedestrian and Transit Requirements.

Pedestrian and Bicycle Circulation within Subdivision.

- A. *The tentative plan for a proposed subdivision shall provide for bicycle and pedestrian routes, facilities and improvements within the subdivision and to nearby existing or planned neighborhood activity centers, such as schools, shopping areas and parks in a manner that will:***
 - 1. *Minimize such interference from automobile traffic that would discourage pedestrian or cycle travel for short trips;***
 - 2. *Provide a direct route of travel between destinations within the subdivision and existing or planned neighborhood activity centers, and***
 - 3. *Otherwise meet the needs of cyclists and pedestrians, considering the destination and length of trip.***

FINDING: The Tentative Plan provides a paved multiuse path along the extension of McClain Drive and short sections of "Road A" and "Road D" to connect to natural trails. The natural trail connection to the north, from Road A, will connect to existing trails in and near Shevlin Park. This separated multiuse path will minimize interference with automobile traffic along the extension of McClain Drive and Sage Steppe. Issues related to the width of streets and the multiuse path, raised by the Senior Transportation Planner, Staff and Applicant are discussed in other sections of this decision.

Staff, in the Staff Report, indicated that there is no evidence of other existing or planned neighborhood activity centers outside of the subdivision. The Hearings Officer, upon review of the record, concurs with this Staff statement. The Hearings Officer finds this approval criterion can be met.

- B. *Subdivision Layout.***
 - 1. *Cul-de-sacs or dead-end streets shall be allowed only where, due to topographical or environmental constraints, the size and shape of the parcel, or a lack of through-street connections in the area, a street connection is determined by the Planning Director or Hearings Body to be infeasible or***

inappropriate. In such instances, where applicable and feasible, there shall be a bicycle and pedestrian connection connecting the ends of cul-de-sacs to streets or neighborhood activity centers on the opposite side of the block.

FINDING: The proposal includes four private streets ending in cul-de-sacs to access interior lots. As described in previous findings, there is no need for an east-west connection through the subdivision, beyond the natural trails that are provided to access Shevlin Park and lands to the east. The main route through the subdivision will be the north-south extension of McClain Drive, which includes a separated multiuse path for pedestrians and cyclists. The Hearings Officer finds this approval criterion will be met.

- 2. *Bicycle and pedestrian connections between streets shall be provided at mid block where the addition of a connection would reduce the walking or cycling distance to an existing or planned neighborhood activity center by 400 feet and by at least 50 percent over other available routes.***

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

"[T]he bicycle/pedestrian traffic is north-south directional, as the development is bounded by Shevlin Park to the west and by topography to the east, with no through streets east or west. A direct north-south roadway connection is proposed for vehicles, bicycles, and pedestrians. There are no existing or planned neighborhood activity centers that would warrant mid-block connections."

The Hearings Officer, based upon a review of the record, concurs with Applicant's above-quoted statement. The Hearings Officer finds this approval criterion is met.

- 3. *Local roads shall align and connect with themselves across collectors and arterials. Connections to existing or planned streets and undeveloped properties shall be provided at no greater than 400-foot intervals.***
- 4. *Connections shall not be more than 400 feet long and shall be as straight as possible.***

FINDING: The only local roads crossing a collector will be the connection of "Road A" and "Road D" and will align with each other across the north-south road. The Hearings Officer finds this approval criterion will be met.

C. *Facilities and Improvements.*

- 1. *Bikeways may be provided by either a separate paved path or an on-street bike lane, consistent with the requirements of DCC Title 17.***
- 2. *Pedestrian access may be provided by sidewalks or a separate paved path, consistent with the requirements of DCC Title 17.***
- 3. *Connections shall have a 20 foot right of way, with at least a 10 foot usable surface.***

FINDING: The proposal includes areas with paved multiuse paths (along the collector roadway and one segment located on Road A between the collector road and nature path west of Lot 3). Generally, the proposal does not include multiuse paths on the private roads. The multiuse path on the collector road is proposed to be 8-feet in width. This issue will be addressed in the findings for DCC 17.48. The Hearings Officer incorporates findings for DCC 17.48 as additional findings for this approval criterion. The Hearings Officer finds, with a condition of approval, this criterion will be met.

Section 17.36.150. Blocks.

- A. General. The length, width and shape of blocks shall accommodate the need for adequate building site size, street width and direct travel routes for pedestrians and cyclists through the subdivision and to nearby neighborhood activity centers, and shall be compatible with the limitations of the topography.**
- B. Size. Within an urban growth boundary, no block shall be longer than 1,200 feet between street centerlines. In blocks over 800 feet in length, there shall be a cross connection consistent with the provisions of DCC 17.36.140.**

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

"The subject property is not within an Urban Growth Boundary. The vehicular, bicycle and pedestrian traffic is north-south directional, and the development is bounded by Shevlin Park to the west and by topography to the east, with no through streets east or west. The north-south connection between Sage Steppe and McClain Drive is proposed to be constructed to collector standards and is as direct a route as feasible through the proposed development while also accommodating topography and required minimum lot sizing. While there are no neighborhood activity centers nearby the proposed subdivision at the time of submittal, this north-south connection will provide access to any future neighborhood activity centers that might be developed to the south."

The Hearings Officer, based upon a review of the record, concurs with Applicant's above-quoted statement. The Hearings Officer finds subsection (A) will be met and that Subsection (B) does not apply.

Section 17.36.160. Easements.

- A. Utility Easements. Easements shall be provided along property lines when necessary for the placement of overhead or underground utilities, and to provide the subdivision or partition with electric power, communication facilities, street lighting, sewer lines, water lines, gas lines or drainage. Such easements shall be labeled "Public Utility Easement" on the tentative and final plat; they shall be at least 12 feet in width and centered on lot lines where possible, except utility pole guyline easements along the rear of lots or parcels adjacent to unsubdivided land may be reduced to 10 feet in width.**

B. Drainage. *If a tract is traversed by a watercourse such as a drainageway, channel or stream, there shall be provided a stormwater easement or drainage right of way conforming substantially with the lines of the watercourse, or in such further width as will be adequate for the purpose. Streets or parkways parallel to major watercourses or drainageways may be required.*

FINDING: The Applicant will be required to show all required utility easements on the final subdivision plat and to label them "Public Utility Easements." The Hearings Officer finds that approval criterion (B) is not applicable, as the tract does not appear to be traversed by a watercourse.

Utility Easements: **Prior to final plat approval of each phase**, all required utility easements shall be shown on the final plat. Easements shall be provided along property lines when necessary for the placement of overhead or underground utilities, and to provide the subdivision or partition with electric power, communication facilities, street lighting, sewer lines, water lines, gas lines or drainage. Such easements shall be labeled "Public Utility Easement" on the tentative and final plat; they shall be at least 12 feet in width and centered on lot lines where possible, except utility pole guyline easements along the rear of lots or parcels adjacent to unsubdivided land may be reduced to 10 feet in width.

The Hearings Officer finds, with the inclusion of the above-quoted condition of approval this approval criterion will be met.

Section 17.36.170. Lots, Size and Shape.

The size, width and orientation of lots or parcels shall be appropriate for the location of the land division and for the type of development and use contemplated, and shall be consistent with the lot or parcel size provisions of DCC Title 18 through 21, with the following exceptions:

- A. *In areas not to be served by a public sewer, minimum lot and parcel sizes shall permit compliance with the requirements of the Department of Environmental Quality and the County Sanitarian, and shall be sufficient to permit adequate sewage disposal. Any problems posed by soil structure and water table and related to sewage disposal by septic tank shall be addressed and resolved in the applicant's initial plan.***
- B. *Where property is zoned and planned for business or industrial use, other widths and areas may be permitted by the Hearings Body. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off street service and parking facilities required by the type of use and development contemplated.***

FINDING: The size, width, and orientation of the lots are appropriate to the proposed residential use. Lot size and shape criteria are governed by DCC 19.22, which has been reviewed earlier in this decision. The Applicant has applied and been approved for a number of onsite sewage disposal system evaluations. Onsite system approvals are required prior to the final plat approval. The

Hearings Officer finds that subsection (B) above does not apply to this proposal. The Hearings Officer finds these approval criteria will be met.

Section 17.36.180. Frontage.

- A. Each lot or parcel shall abut upon a public road, or when located in a planned development or cluster development, a private road, for at least 50 feet, except for lots or parcels fronting on the bulb of a cul de sac, then the minimum frontage shall be 30 feet, and except for partitions off of U.S. Forest Service or Bureau of Land Management roads. In the La Pine Neighborhood Planning Area Residential Center District, lot widths may be less than 50 feet in width, as specified in DCC 18.61, Table 2: La Pine Neighborhood Planning Area Zoning Standards. Road frontage standards in destination resorts shall be subject to review in the conceptual master plan.**

FINDING: The lots in this proposed subdivision are required to meet the frontage standards. Most lots exceed this requirement. Some lots meet the minimum requirement, such as flag lots 33 and 77. The Hearings Officer finds this approval criterion will be met.

- B. All side lot lines shall be at right angles to street lines or radial to curved streets wherever practical.**

FINDING: As designed, all side lot lines would, to the maximum extent practicable considering terrain, be at approximately right angles to street lines or radial to curved streets. The Hearings Officer finds this approval criterion will be met.

Section 17.36.190. Through Lots.

Lots or parcels with double frontage should be avoided except where they are essential to provide separation of residential development from major street or adjacent nonresidential activities to overcome specific disadvantages of topography and orientation. A planting screen easement of at least 10 feet in width and across which there shall be no right of access may be required along the lines of lots or parcels abutting such a traffic artery or other incompatible use.

FINDING: There are no proposed lots with double frontage. The Hearings Officer finds this approval criterion does not apply.

Section 17.36.200. Corner Lots.

Within an urban growth boundary, corner lots or parcels shall be a minimum of five feet more in width than other lots or parcels, and also shall have sufficient extra width to meet the additional side yard requirements of the zoning district in which they are located.

FINDING: The proposed development is not within an urban growth boundary. The Hearings Officer finds this criterion does not apply.

Section 17.36.210. Solar Access Performance.

- A. As much solar access as feasible shall be provided each lot or parcel in every new subdivision or partition, considering topography, development pattern and existing vegetation. The lot lines of lots or parcels, as far as feasible, shall be oriented to provide solar access at ground level at the southern building line two hours before and after the solar zenith from September 22nd to March 21st. If it is not feasible to provide solar access to the southern building line, then solar access, if feasible, shall be provided at 10 feet above ground level at the southern building line two hours before and after the solar zenith from September 22nd to March 21st, and three hours before and after the solar zenith from March 22nd to September 21st.**
- B. This solar access shall be protected by solar height restrictions on burdened properties for the benefit of lots or parcels receiving the solar access.**
- C. If the solar access for any lot or parcel, either at the southern building line or at 10 feet above the southern building line, required by this performance standard is not feasible, supporting information must be filed with the application.**

FINDING: The proposed lots will be no smaller than 2.5 acres, which should provide adequate area to provide solar access at southern property lines. Additionally, a condition of approval has already been suggested to require compliance with the solar setback requirements of DCC 19.88.210.

Section 17.36.220. Underground Facilities.

Within an urban growth boundary, all permanent utility services ...

FINDING: The proposed subdivision is not within an urban growth boundary. The Hearings Officer finds this approval criterion does not apply.

Section 17.36.230. Grading of Building Sites.

Grading of building sites shall conform to the following standards, unless physical conditions demonstrate the property of other standards:

- A. Cut slope ratios shall not exceed one foot vertically to one and one half feet horizontally.**
- B. Fill slope ratios shall not exceed one foot vertically to two feet horizontally.**
- C. The composition of soil for fill and the characteristics of lots and parcels made usable by fill shall be suitable for the purpose intended.**
- D. When filling or grading is contemplated by the subdivider, he shall submit plans showing existing and finished grades for the approval of the Community Development Director. In reviewing these plans, the Community Development Director shall consider the need for drainage and effect of filling on adjacent property. Grading shall be finished in such a manner as not to create steep banks or unsightly areas to adjacent property.**

FINDING: No specific grading or fill has been proposed by the Applicant. Staff noted, in the Staff Report that

“if grading were to be proposed, it is difficult to craft a clear and objective condition of approval from these criteria, so staff defers to the Hearings Officer as to if a condition of approval is required, and suggests the following draft condition if so.”

Grading: **Prior to the issuance of building permits on individual lots,** the Applicant shall demonstrate cut slope ratios shall not exceed one foot vertically to one and one half feet horizontally, fill slope ratios shall not exceed one foot vertically to two feet horizontally, and grading plans shall comply with DCC 17.36.230.

The Hearings Officer agrees with both the Staff’s comments and recommended language for a condition. The Hearings Officer finds that if the above-quoted condition language is included in an approval then this criterion will be met.

Section 17.36.250. Lighting.

Within an urban growth boundary, the subdivider shall provide underground wiring to the County standards, and a base for any proposed ornamental street lights at locations approved by the affected utility company.

FINDING: The proposed development is not within an urban growth boundary. The Hearings Officer finds this approval criterion does not apply.

Section 17.36.260. Fire Hazards.

Whenever possible, a minimum of two points of access to the subdivision or partition shall be provided to provide assured access for emergency vehicles and ease resident evacuation.

FINDING: The north-south extension of McClain Drive and Sage Steppe will provide two points of access to the subdivision. As noted in earlier findings emergency access will need to be provided even if the McClain Drive extension is not fully constructed yet. Applicant agreed to conditional language and the Fire Department suggested conditional language that if included in any approval of this application will satisfy the requirements of this approval criterion.

Section 17.36.270. Street Tree Planting.

Street tree planting plans, if proposed, for a subdivision or partition, shall be submitted to the Planning Director and receive his approval before the planting is begun.

FINDING: No street trees have been proposed by the Applicant.

Section 17.36.280. Water and Sewer Lines.

Where required by the applicable zoning ordinance, water and sewer lines shall be constructed to County and City standards and specifications. Required water mains and service lines shall be installed prior to the curbing and paving of new streets in all new subdivisions or partitions.

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

"No sewer lines are proposed as subdivision lots will be served by individual on-site subsurface disposal. City water lines are proposed to serve the subdivision and will be installed to City standards and specifications, including installation prior to paving of the streets. The City of Bend has provided a Will Serve letter for water, included in Exhibit A.

The Applicant was party to the Westside Infrastructure Group (WIG, Exhibit J) and entered into a Development Agreement (WIG DA, Ordinance NS-2316, effective November 16, 2018) with the City of Bend that assessed the infrastructure impacts and mitigations to City infrastructure as a result of the combined westside development. Ordinance NS-2316 notes "[b]ecause the uses and density of the Properties are either prescribed by the BCP and BDC ...the overall off-site infrastructure impact as a result of development of the Properties can be reasonably determined and addressed. The purpose of this Agreement is to provide for the equitable allocation of these costs, and define development triggers and assignment of responsible parties for the construction of the required public improvements to fully mitigate off-site sewer, water and vehicular transportation infrastructure impacts from the development of the Properties subject to this Agreement." As such, the WIG Development Agreement analyzed all City water and street services for this master plan area. The terms of the Development Agreement commit the Applicants and the City of Bend to the terms of the agreement for a period of 15 years. This WIG agreement identifies the only water element to be the extension of the waterline at Sage Steppe Drive in Tree Farm, north to McClain Drive. The WIG Agreement requires this waterline to be constructed by Rio Lobo Investments (subject property owner), if the property is served by City water. The WIG Agreement further notes that no other off-site water infrastructure improvements or upgrades are required."

Staff, in the Staff Report, recommended the following condition of approval to ensure compliance with this criterion.

Water and Sewer Lines: Prior to curbing and paving new streets, water mains and water and sewer lines shall be constructed and installed to County and City standards and specifications. Evidence of approved completion of the water mains and lines to the City of Bend's standards shall be submitted to the Planning Division for review.

The Hearings Officer finds that with the inclusion of Staff's recommended condition of approval this approval criterion will be met.

Section 17.36.290. Individual Wells.

In any subdivision or partition where individual wells are proposed, the applicant shall provide documentation of the depth and quantity of potable water available from a minimum of two wells within one mile of the proposed land division. Notwithstanding DCC 17.36.300, individual wells for subdivisions are allowed when parcels are larger than 10 acres.

FINDING: No individual wells are proposed. The Hearings Officer finds this approval criterion does not apply.

Section 17.36.300. Public Water System.

In any subdivision or partition where a public water system is required or proposed, plans for the water system shall be submitted and approved by the appropriate state or federal agency. A community water system shall be required where lot or parcel sizes are less than one acre or where potable water sources are at depths greater than 500 feet, excepting land partitions. Except as provided for in sections 17.24.120 and 17.24.130, a required water system shall be constructed and operational, with lines extended to the lot line of each and every lot depicted in the proposed subdivision or partition plat, prior to final approval.

FINDING: Water is proposed to be supplied by the City of Bend. Staff, in the Staff Report, recommended the following condition of approval to ensure compliance.

Public Water System: **Prior to final plat approval of each phase**, plans for the water system shall be submitted and approved by the appropriate city, state, or federal agency. The water system shall be constructed and operational, with lines extended to the lot line of each and every lot depicted in the proposed subdivision.

Applicant proposed the above-quoted condition of approval be modified to read as follows:

Public Water System: **Prior to final plat approval of each phase, plans for the water system shall be submitted and approved by the appropriate city, state, or federal agency. The water system shall be constructed and operational, with lines extended to the lot line of each and every lot depicted in the proposed phase, or the applicant has submitted an improvement agreement and performance assurance for such construction.**

The Hearings Officer finds that with Applicant’s proposed condition of approval is appropriate so long as additional language is included to assure for the form of any improvement agreement and performance assurance is in a form acceptable to the County. The Hearings Officer finds this approval criterion will be met with the following condition of approval:

Public Water System: **Prior to final plat approval of each phase**, plans for the water system shall be submitted and approved by the appropriate city, state, or federal agency. The water system shall be constructed and operational, with lines extended to the lot line of each and every

lot depicted in the proposed phase, or the Applicant has submitted an improvement agreement and performance assurance. Any improvement agreement shall be reviewed and approved by Deschutes County Community Development and County Council to assure the agreement(s) is/are in a form that meets the requirements of DCC 17.24.120. Documentation related to performance assurances shall be in a form satisfactory to the Deschutes County Community Development and County Council.

Chapter 17.44, Park Development.

Section 17.44.010. Dedication of Land.

- A. For subdivisions or partitions inside an urban growth boundary, the developer shall set aside and dedicate to the public for park and recreation purposes not less than eight percent of the gross area of such development, if the land is suitable and adaptable for such purposes and is generally located in an area planned for parks.**
- B. For subdivisions or partitions outside of an urban growth boundary, the developer shall set aside a minimum area of the development equal to \$350 per dwelling unit within the development, if the land is suitable and adaptable for such purposes and is generally located in an area planned for parks.**
- C. For either DCC 17.44.010 (A) or (B), the developer shall either dedicate the land set aside to the public or develop and provide maintenance for the land set aside as a private park open to the public.**
- D. The Planning Director or Hearings Body shall determine whether or not such land is suitable for park purposes.**
- E. If the developer dedicates the land set aside in accordance with DCC 17.44.010 (A) or (B), any approval by the Planning Director or Hearings Body shall be subject to the condition that the County or appropriate park district accept the deed dedicating such land.**
- F. DCC 17.44.010 shall not apply to the subdivision or partition of lands located within the boundaries of a parks district with a permanent tax rate.**

FINDING: The Subject Property is located within the boundaries of the Bend Park and Recreation District, which has a permanent tax rate. The Hearings Officer finds these approval criteria do not apply.

Chapter 17.48, Design and Construction Specifications.

Section 17.48.060. Improvement Plans.

- A. A complete set of certified mylar improvement plans shall be approved by the Road Department Director prior to the start of construction or the signing of the final plat.**
- B. The improvement plans shall become the property of the County and will remain at the Road Department.**

C. The improvement plans which shall be 24 by 36 inches shall include, but not be limited to: [...]

FINDING: The Applicant will be required to meet subsection (A) above and the requirements of this section. Staff, in the Staff report, recommended the following condition of approval.

Road Improvement Plans **Prior to final plat approval of each phase**, the Applicant shall submit a complete set of certified mylar improvement plans to the Road Department Director for approval. Public and private road design and construction shall be in accordance with all applicable sections of DCC 17.48. Applicant shall submit public and private road improvement plans to Road Department for approval **prior to commencement of construction** pursuant to DCC 17.40.020 and 17.48.060. Improvements shall be constructed under the inspection of a registered professional engineer consistent with ORS 92.097 and DCC 17.40.040.

The Road Department recommended slightly different conditional language to address this approval criterion. The Road Department recommended the following:

Road Improvement Plans Applicant shall submit road improvement plans to Road Department for approval prior to commencement of construction pursuant to DCC 17.40.020 and 17.48.060. The roads shall be designed to the minimum standard for a private road pursuant to 17.48.160, 17.48.180, and 17.48A or pursuant to the master plan upon approval. Road improvement plans shall be prepared in accordance with all applicable sections of DCC 17.48.

The Hearings Officer finds that with the inclusion of Staff’s recommended condition of approval this approval criterion will be met.

Section 17.48.100. Minimum Right of Way Width.

The minimum right of way width is 60 feet unless specified otherwise in Table A (or in any right of way specifications set forth for a particular zone in a zoning ordinance). (See Table A set out at the end of DCC Title 17.)

FINDING: No right-of-way width is required for private streets, therefore, the Hearings Officer finds that this approval criterion does not apply to private roads. The right-of-way for the north-south extension of McClain Drive is proposed to be 60 feet, meeting this standard.

Section 17.48.110. Turn Lanes.

When a turn lane is required, it shall be a minimum of 14 feet in width, except where road specifications in a zoning ordinance provide for travel lanes of lesser width. Additional right of way may be required.

FINDING: No turn lanes have been required.

Section 17.48.120. Partial Width Roads.

Partial width roads or half streets shall not be allowed.

FINDING: No partial width road or half streets are proposed.

Section 17.48.130. Road Names.

All roads shall be named in conformance with the provisions of the Deschutes County uniform road naming system set forth in DCC Title 16.

FINDING: Although similar to a previous condition of approval, Staff, in the Staff Report, recommended the following addition to a previous condition of approval to ensure compliance with this somewhat different criterion. Changes are *in italic font*.

Street Names: ***Prior to final plat approval of each phase***, no street name shall be used which will duplicate or be confused with the name of an existing street in a nearby city or in the County. Street names and numbers shall conform to the established pattern in the County and shall require approval from the County Property Address Coordinator. The north-south collector road shall be named McClain Drive north of the intersection of "Road A" and "Road D", and shall be named Sage Steppe south of the same intersection. *All roads shall be named in conformance with the provision of the Deschutes County uniform road naming system set forth in DCC Title 16.*

The Hearings Officer finds that with the inclusion of Staff's recommended condition of approval this approval criterion will be met.

Section 17.48.140. Bikeways.

A. General Design Criteria.

- 1. *Bikeways shall be designed in accordance with the current standards and guidelines of the Oregon (ODOT) Bicycle and Pedestrian Plan, the American Association of State Highway Transportation Officials (AASHTO) Guide for Development of New Bicycle Facilities, and the Deschutes County Bicycle Master Plan. See DCC 17.48 Table B.***
- 2. *All collectors and arterials shown on the County Transportation Plan map shall be constructed to include bikeways as defined by the Deschutes County Bicycle Master Plan.***
- 3. *If interim road standards are used, interim bikeways and/or walkways shall be provided. These interim facilities shall be adequate to serve bicyclists and pedestrians until the time of road upgrade.***

B. Multi-use Paths.

- 1. *Multi-use paths shall be used where aesthetic, recreation and safety concerns are primary and a direct route with few intersections can be established. If private roads are constructed to a width of less than 28 feet, multi-use paths shall be provided.***

- 2. Multi-use paths are two way facilities with a standard width of 10 feet, but with a 12 foot width if they are subjected to high use by multiple users. These paths shall meet County multi-use path standards and shall connect with bike facilities on public roads.**

FINDING: The proposed collector road is not on the County's Transportation Plan, but the Applicant did propose a paved multiuse path along the length of this new collector road. No interim features are proposed. Applicant, in its burden of proof, responded to this approval criterion with the following comments:

"The public north-south roadway will serve the through traffic (vehicular, bicycle, pedestrian) between the adjacent north and south neighborhoods. Aesthetic, recreation and safety concerns are paramount for this proposed subdivision. The new connection between Sage Steppe and McClain includes only one four-way intersection and it is with a small, low volume private street; the others are T-intersections with private cul-de-sac and/or a private street. An 8-foot multiuse path is proposed along the entire north-south roadway connection between Sage Steppe and McClain Drive. This eight-foot width was designed to match the existing multiuse path along Sage Steppe, to meet the minimum bikeway design requirements of DCC Chapter 17.48, Table B. The eight-foot wide multiuse path in The Tree Farm was approved through the County decision 247-14-000243-TP, due to forecasted low traffic volumes and the Applicant requests approval of the eight-foot width on this same basis, and to permit the extension of the path with the same design as existing.

Bicycle and pedestrian traffic is forecast to be minimal on the private streets, originating and destined only for the individual lots on each private street, as the private streets do not connect to any other access points or streets. This low volume does not warrant separate bike lanes and/or multiuse paths on these private streets. As a result, the Applicant coordinated with the County Roadway Department to propose 24-foot wide private streets, four feet greater than the minimum private street width. The additional four feet will provide extra width for local bicyclists and pedestrians, to accommodate all modes within the pavement."

On July 16, 2019, the Applicant provided the following supplemental comments:

"The submitted typical street sections include an 8-foot multiuse path along the private street and refers to the plan for the location of this path. The plan includes the path along the northern section of the private street, between McClain Drive and the trail that accesses the northern open space and Bull Springs Trail.

The proposal does not include a multiuse path continuing south along the private streets, for the following reason, as referenced in the narrative:

Any bicycle or pedestrian traffic on the private street will be local traffic, not warranting or requiring a dedicated bikeway or sidewalk. Further, DCC 17.48 Table B allows for shared roadways when the speeds are below 25 mph and ADT is less than 3000. The speed limit on the private streets will be less than 25 mph and the submitted Site Traffic Report

estimates the entire development to have less than 800 ADT, suggesting that the private streets would each have even less traffic, as they are not through streets. Through coordination with the County Roadway Department, the Applicant has included four feet of extra pavement width on the shared roadway private streets to minimize potential conflicts between bicyclists, pedestrians and vehicles."

As discussed in the findings for DCC 17.36.060 above, the Applicant proposed for the private roads to be approved with a 24-foot paved surface where there are no multiuse paths or bike lanes proposed, which is 4-foot narrower than the standard. The Applicant also requested approval for 8-foot multiuse paths where they are provided, which are 2-feet to 4-feet narrower than the standard.

The Hearings Officer incorporates the findings for DCC 17.36.060 and ORS 92.090(2) as additional findings for this approval criterion. The Hearings Officer finds the Applicant's proposed street widths are appropriate and meet minimum standards.

The Hearings Officer next addresses the path locations and widths within the proposed subdivision. The Hearings Officer acknowledges that pathway findings also are relevant to other approval criteria and will be incorporated into those findings where appropriate.

The Hearings Officer previously noted concurrence with the Applicant's comments related to the width of the multiuse path along the collector road (extension of McClain Drive/Sage Steppe). The Hearings Officer is aware of DCC 17.48 Table A Note 23 which, in summary, states that the minimum path width is 8-feet and that wider paths (10-feet standard width) are preferred. Note 23 factors include the length of the path connection, the anticipated usage and sight distance considerations. The Hearings Officer finds that the proposed 8-foot paved multiuse path along the collector road "matches" the multiuse path at the adjacent Miller Tree Farm development. Further, the Hearings Officer finds that the anticipated use of the collector road multiuse path will be low. The Hearings Officer finds the proposed collector road multiuse path will be compatible with surrounding development. The Hearings Officer finds that proposed multiuse path (paved and 8-feet in width), along the extension of McClain Drive and Sage Steppe, is appropriate considering the Note 23 factors set forth in DCC 17.48.

The Hearings Officer finds the Applicant's proposal for 24-feet of pavement on the private roadways with **no** multiuse path is more problematic. DCC 17.48.140(B)(1) clearly states that if

"private roads are constructed to a width of less than 28 feet, multi-use paths shall be provided."

Applicant proposed private roads with a "width of 24-feet of pavement."

Applicant justified that there would be **no** multiuse path along the private roads because the private roads "only serve the parcels abutting" them. Further, Applicant stated that the private roads will experience "low local traffic" volume and "no through traffic." Applicant referred the Hearings Officer to the Senior Transportation planner's comment that he (the transportation planner) "understands the rationale for the reduced width on a private road that will see little to no through

traffic." The Hearings Officer concurs with the underlying logic of Applicant's justification for **no** multiuse paths along the private roads.

However, the Hearings Officer finds Applicant failed to provide legal authority or persuasive argument to support a Hearings Officer finding that **no** multiuse paths are acceptable under this criterion. The Hearings Officer takes note that Wisco, in her Hearing testimony and Power Point presentation (Slides 19 and 20), referred to DCC 17.48 Table A notes 8 and 10. The Hearings Officer finds that neither note 8 nor 10 clearly justify Applicant's proposed 24-foot private roads and **no** multiuse path. The Hearings Officer agrees with Wisco that 20-foot private roads may be allowed for "cul-de-sac's and roads with low anticipated traffic volumes" but only so if "separate multiple paths are provided (DCC 17.48 Table A, Note (8)).

The Hearings Officer also takes note that Wisco referenced, in her Hearing testimony and Power Point presentation (Slide 21) DCC 17.48.040. The Hearings Officer does not understand Wisco's testimony related to DCC 17.48.040 to provide legal justification for 24-foot private roads and **no** multiuse paths. The Hearings Officer finds DCC 17.48.040 allows up to a "10% variation" without applying variance criteria if certain factors are present. The Hearings Officer does not believe that the width requirement for a multiuse path (likely at a minimum width of 8-feet) can be reduced to zero.

No interested person in this case pointed the Hearings Officer to a section of the DCC, or any other relevant law, that requires that the width of a multiuse path be dedicated, in fee, to the County. If that is in fact a true representation of the law then the Hearings Officer finds that any multiuse path required by DCC 17.48 Table A may be created by an easement. The Hearings Officer also finds that the multiuse paths adjacent to private roads need not be paved; rather, they may remain in a "natural state." The Hearings Officer finds that a condition of approval is necessary to assure that a minimum width of 8-feet for multiuse path along private roads be shown on the final plat for all phases of the proposal.

The Hearings Officer notes that Applicant, Staff and BPRD agree that a hard-surface multiuse path is required on Road A between the McClain Drive /Sage Steppe collector road and "the natural surface trail to the west" (See Applicant's burden of proof page 46 and July 16, 2019 record submission). The Hearings Officer finds the record is less clear regarding a "trail" connection on Road D between the McClain Drive /Sage Steppe collector road and a natural surface trail running north/northeast between lots 72 and 73.

BPRD (Keever July 24, 2019 letter, page 2) stated the Applicant and BPRD participated in the Westside Transect Zone project. Keever stated, in the July 24, 2019 letter (page 1), that "the Westgate Master Plan and Tentative Plan represent the details the District and the applicant have agree upon..." Keever, on page 2, stated that the BPRD/Applicant agreement included the following:

"The applicant will build and maintain an 8-foot wide hard surface trail, set-off from the street, along Sage Steppe Drive connecting to McClain Drive, with spurs on Road A and Road D...The trail on Road D is to connect to the trail on Sage Steppe Drive and the natural surface trail to the east."

The Hearings Officer, based upon a review of documents in the record, finds that Applicant did not clearly convey whether or not its proposal included a "hard-surface trail" connection between the McClain Drive /Sage Steppe collector road and the trail intersection on Road D. The Hearings Officer finds it necessary and appropriate to require an 8-foot width hard-surface on the north side of Road D between the McClain Drive /Sage Steppe collector road and the natural trail located to the west of Lot 73. The Hearings Officer finds the following language for a condition of approval adequately addresses the private road multiuse path issue:

Multiuse Paths on Private Roads. **As an ongoing condition of approval,** Applicant must show, on the final plat for each phase, an 8-foot multiuse path along all private roads excepting for (1) an 8-foot hard surface trail is required on a segment of Road A between the collector road (extension of McClain Drive and Sage Steppe) and the nature trail running north between lots 3 and 4 and (2), an 8-foot hard surface trail is required on a segment of Road D between the collector road (extension of McClain Drive and Sage Steppe) and the nature trail running north/northeast between lots 72 and 73.

The Hearings Officer takes note of a letter submit on July 23, 2019 by Rick Root. Root, in the July 23, 2019 letter, stated the following:

"Provide a new (or revised) public trail connection that makes a more direct connection between the eastern and western boundaries of the subdivision from the city of Bend side of the development to/from Shevlin Park. This trail would hopefully align, as much as practical, with the existing trail within the park that traverses up the grade from Tumalo Creek (i.e., near the covered bridge). This would provide a greater benefit to the public use of the park and trail network. The entire trail corridor should be contained within a public easement (or more ideally, separate tracts - where not within roadways - possibly even the tracts being dedicated to the Bend Park & Recreation District? I have attached a sketch that illustrates one possible alignment for this connection (Attachment - A)."

The Hearings Officer reviewed "Attachment - A) to the Root July 23, 2019 letter. The Hearings Officer notes that the Attachment - A proposed connection is located immediately south/southwest of proposed Lot 9 and runs through the planned "No Build Zone" and the "Conservation Zone."

The "No Build Zone" and "Conservation Zones" have at least two very important purposes; wildfire mitigation and wildlife protection. As stated by Paul Dewey (Central Oregon Landwatch) and Myles Conway (attorney for Applicant) new connections to Shevlin Park, through the "No Build Zone" and "Conservation Zone" are discouraged. Hearing testimony of Quinn Keever, on behalf of BPRD, appeared to the Hearings Officer to concur that no new connections to Shevlin Park, through the Subject Property, should be allowed. Keever noted the connection to Shevlin Park, through the Subject Property, would be via a natural trail running north from Road A.

The Hearings Officer finds, based upon the evidence in the record, that the proposed connection from the Subject Property running north from Road A should be the only connection from the Subject Property to Shevlin Park.

The Hearings Officer finds, with the condition referenced above (private roadway multiuse path easements, hard-surface paths connecting the McClain Drive /Sage Steppe collector road to natural paths on Roads A and D) these criteria can be met.

- C. Bike Lanes. Six foot bike lanes shall be used on new construction of curbed arterials and collectors.**
- D. Shoulder Bikeways.**
 - 1. Shoulder bikeways shall be used on new construction of uncurbed arterials and collectors.**
 - 2. Shoulder bikeways shall be at least four feet wide. Where the travel lane on an existing arterial or collector is not greater than eleven feet, the bikeway shall be a minimum of four feet wide.**
- E. Mountain Bike Trails.**
 - 1. Mountain bike (dirt or other unpaved surface) trails may be used as recreational or interim transportation facilities.**
 - 2. Trails used for transportation shall have a two foot minimum tread width and a six foot minimum clearing width centered over the trail, and a minimum overhead clearance of seven feet. Trails used solely for recreational use may be narrower with less clearing of vegetation.**

FINDING: The Applicant proposed a separated multiuse path rather than bike lanes. The natural trail connections identified in the application materials are not indicated as specifically mountain bike trails but are indicated as connections to other trails outside of the Subject Property. If these trails will be open for mountain bike use, Staff, in the Staff Report, recommended the following condition of approval.

Mountain Bike Trails: **As an ongoing condition of approval,** mountain bicycle trails used for transportation shall have a two-foot minimum tread width and a six-foot minimum clearing width centered over the trail, and a minimum overhead clearance of seven feet. Trails used solely for recreational use may be narrower with less clearing of vegetation.

As a cautionary measure the Hearings Officer finds it reasonable and appropriate to include the Staff recommended condition.

Section 17.48.150. Structures.

All structures that carry a road or cross over a road shall be designed to have a 50-year life span. All designs must be approved by the Road Department Director and other affected public or private agencies.

FINDING: No structures to carry a road or cross over a road are proposed or required.

Section 17.48.160. Road Development Requirements – Standards.

A. Subdivision Standards. All roads in new subdivisions shall either be constructed to a standard acceptable for inclusion in the county maintained system or the subdivision shall be part of a special road district or a homeowners association in a planned unit development.

FINDING: The proposed roads include one public right-of-way and several private roads that are required to be constructed to County standards. The Deschutes County Road Department, on July 23, 2019, submitted comments into the record (See Public Agency Comments). The Road Department requested that the Hearings Officer, if the application was approved, to include a number of conditions. The Hearings Officer concurs with the Road Department’s recommended conditions. The Hearings Officer finds with the inclusion of the Road Department’s recommended conditions this approval criterion will be met.

B. Improvements of Public Rights of Way.
1. The developer of a subdivision or partition will be required to improve all public ways that are adjacent or within the land development.
2. All improvements within public rights of way shall conform to the improvement standards designated in DCC Title 17 for the applicable road classification, except where a zoning ordinance sets forth different standards for a particular zone.

C. Primary Access Roads.
1. The primary access road for any new subdivision shall be improved to the applicable standard set forth in Table A.
2. The applicable standard shall be determined with reference to the road’s classification under the relevant transportation plan.
3. For the purposes of DCC 17.48.160 a primary access road is a road leading to the subdivision from an existing paved county, city or state maintained road that provides the primary access to the subdivision from such a road.

FINDING: One public right-of-way (extension of McClain Drive/Sage Steppe) is part of the proposed subdivision. The primary access roads are McClain Drive and Sage Steppe. The proposed public right-of-way and primary access roads will need to be improved to meet the standards in Table A of this section, as will all other roads within the subdivision. The Hearings Officer finds this approval criterion can be met through the suggested condition of approval under DCC 17.48.060.

D. Secondary Access Roads. When deemed necessary by the County Road Department or Community Development Department, a secondary access road shall be constructed to the subdivision. Construction shall be to the same standard used for roads within the subdivision.

FINDING: The Tentative Plan provides two access points. One is located in the north as a connection to McClain Drive and the other is located in the south as a connection to Sage Steppe. The Hearings Officer finds this approval criterion will be met.

E. *Stubbed Roads. Any proposed road that terminates at a development boundary shall be constructed with a paved cul-de-sac bulb.*

FINDING: The Hearings Officer finds that none of the proposed roads will terminate at the development boundary, therefore, no cul-de-sac bulbs will be necessary.

- F. *Cul-de-sacs.***
 - 1. *Cul-de-sacs shall have a length of less than 600 feet, unless a longer length is approved by the applicable fire protection district, and more than 100 feet from the center of the bulb to the intersection with the main road.***
 - 2. *The maximum grade on the bulb shall be four percent.***

FINDING: The Tentative Plan materials show four cul-de-sacs and each one is longer than 600 feet. The Applicant submitted an email from the Bend Fire Department (Exhibit K) which indicates the Fire Department is agreeable to the lengths. The Hearings Officer finds this approval criterion will be met.

G. *Frontage Roads. Right of way widths shall be 40 feet when immediately adjacent to a main highway/arterial; 60 feet when the frontage road is separated from the highway or arterial by private land or as set forth for a particular zone in the zoning ordinance.*

FINDING: No frontage roads are proposed as part of this application.

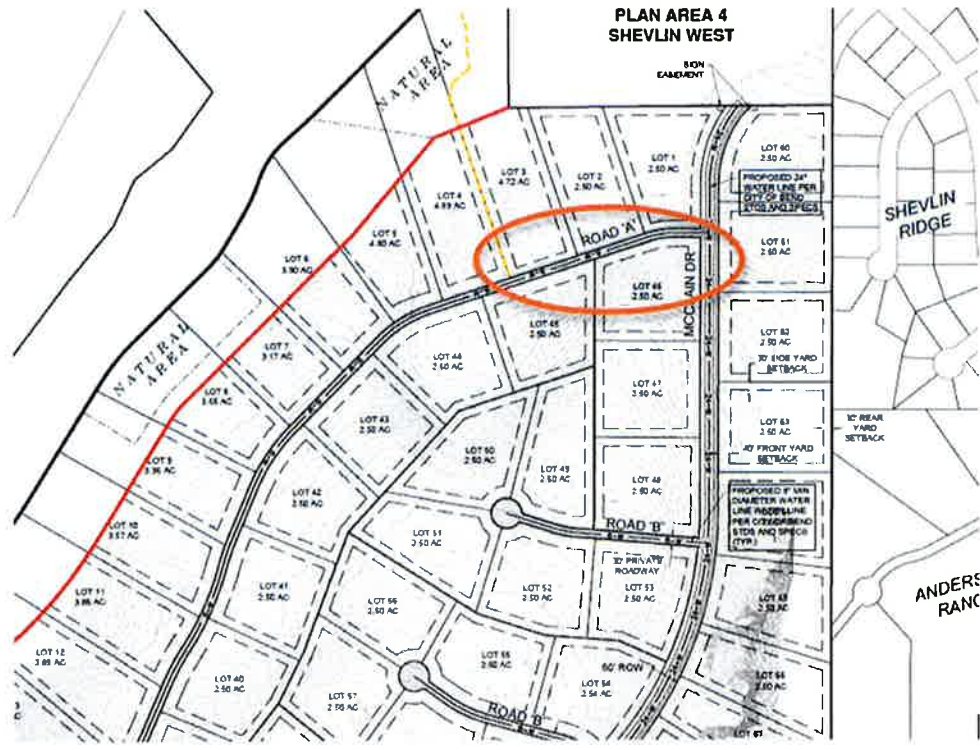
Section 17.48.180. Private Roads.

The following minimum road standards shall apply for private roads:

- A. *The minimum paved roadway width shall be 20 feet in planned unit developments and cluster developments with two foot wide gravel shoulders;***
- B. *Minimum radius of curvature, 50 feet;***
- C. *Maximum grade, 12 percent;***
- D. *At least one road name sign will be provided at each intersection for each road;***
- E. *A method for continuing road maintenance acceptable to the County;***
- F. *Private road systems shall include provisions for bicycle and pedestrian traffic.***
 - 1. *In cluster and planned developments limited to ten dwelling units, the bicycle and pedestrian traffic can be accommodated within the 20-foot wide road.***
 - 2. *In other developments, shoulder bikeways shall be a minimum of four feet wide, paved and striped, with no on street parking allowed within the bikeway, and when private roads are developed to a width of less than 28 feet, bike paths constructed to County standards shall be required.***

FINDING: Applicant, in its burden of proof, responded to this approval criterion with the following comments:

The north-south roadway connecting Sage Steppe and McClain is proposed to be a public roadway. All other roads in the Westgate subdivision are proposed to be private streets. The proposed private street cross-section is included on the submitted plan and includes 24 feet of pavement, 3-foot gravel shoulders. An 8-foot multi-use path is proposed along the northern connection between McClain Drive and the natural trail that connects to Bull Springs Trail (circled in orange below):



The public north-south roadway will serve the through traffic (vehicular, bicycle, pedestrian) from the adjacent north and south neighborhoods. Bicycle and pedestrian traffic is forecast to be minimal on the private streets, originating and destined only for the individual lots on each private street, as the private streets do not connect to any other access points or streets. This low volume does not warrant separate bike lanes and/or multi-use paths on these private streets.

As a result, the Applicant coordinated with the County Roadway Department to propose 24-foot wide private streets, four feet greater than the minimum private street width. The additional four feet will provide extra width for local bicyclists and pedestrians, to accommodate all modes within the pavement.

All radii of curvature are less than 50 and maximum grades are less than 12 percent. Road name signs will be installed in accordance with this criterion during construction." (Applicant's burden of proof included the diagram/map)

The Hearings Officer incorporates the findings for DCC 17.48.140, DCC 17.36.060 and ORS 92.090(2) as additional findings for these approval criteria. The Hearings Officer finds that Applicant's requests for road widths and multiuse paths are acceptable excepting that trail easements are

required on all private roads and a hard-surface off-set (from the road) trail is required on Roads A and D between the collector road extension and nature trails. (See findings for DCC 17.48.140). The Hearings Officer finds that with conditions of approval (See findings for DCC 17.48.140) these approval criteria will be met.

Section 17.48.190. Drainage.

- A. Minimum Requirements.**
 - 1. *Drainage facilities shall be designed and constructed to receive and/or transport at least a design storm as defined in the current Central Oregon Stormwater Manual created by Central Oregon Intergovernmental Council and all surface drainage water coming to and/or passing through the development or roadway.*
 - 2. *The system shall be designed for maximum allowable development.*
- B. Curbed Sections.**
 - 1. *Storm drains within curbed streets shall be designed per the requirements of the current Central Oregon Stormwater Manual created by the Central Oregon Intergovernmental Council.*
 - 2. *Catchbasins shall be constructed in accordance with drawing Nos. 3-1, 3-2 and 3-3. (See drawings 3-1, 3-2 and 3-3 set out at the end of DCC Title 17 and by this reference incorporated herein.)*
- C. Noncurbed Sections.**
 - 1. *Road culverts shall be concrete or metal with a minimum design life of 50 years.*
 - 2. *All cross culverts shall be 18 inches in diameter or larger.*
 - 3. *Culverts shall be placed in natural drainage areas and shall provide positive drainage.*
- D. Drainage Swales.** *The Design Engineer is responsible to design a drainage swale adequate to control a design storm as defined in the Central Oregon Stormwater Manual created by Central Oregon Intergovernmental Council.*
- E. Drainage Plans.** *A complete set of drainage plans including hydraulic and hydrologic calculations shall be incorporated in all road improvement plans.*
- F. Drill Holes.** *Drill holes are prohibited.*
- G. Injection wells (drywells) are prohibited in the public right-of-way.**

FINDING: The Applicant did not propose curbed streets. No drill holes or injection wells are proposed. The typical road cross sections provided as part of the application materials indicate the north-south extension of McClain Drive will be designed with a 6-foot swale on each side of the road shoulder. No engineered plans for drainage were submitted. Staff, in the Staff Report, recommended the following condition:

Drainage: **Prior to final plat approval of each phase**, the Applicant shall provide certification by a licensed professional engineer that drainage facilities have been designed and constructed to receive and/or transport at least a design storm as defined in the current Central Oregon Stormwater Manual created by Central Oregon Intergovernmental Council and all surface

drainage water coming to and/or passing through the development or roadways. The engineer's certification shall confirm that all drainage features have been designed and constructed to comply with DCC 17.48.190.

The Hearings Officer concurs with Staff's recommendation of the above-quoted condition. The Hearings Officer finds that with the Staff recommended condition these approval criteria will be met.

Section 17.48.210. Access.

- A. Permit Required. Access onto public right of way or change in type of access shall require a permit. Permits are applied for at offices of the Community Development Department.**
- B. Access Restrictions and Limitations. The creation of access onto arterials and collectors is prohibited unless there is no other possible means of accessing the parcel. In any event, residential access onto arterials and collectors shall not be permitted within 100 feet of an intersection or the maximum distance obtainable on the parcel, whichever is less.**

FINDING: At least 15 lots adjacent to the proposed north-south collector road have no other access option besides this new road. Due to the size of the parcels, it appears those lots will be able to meet the separation distances in subsection (B) above. Staff, in the Staff Report, suggested the following condition of approval to ensure compliance with subsection (A) above.

Driveway Approach Permits: **Prior to the issuance of building permits on individual lots,** the Applicant shall obtain driveway access permits for any new access points to a public right-of-way pursuant to DCC 17.48.210(A).

The Hearings Officer concurs with Staff's recommendation of the above-quoted condition. The Hearings Officer finds that with the Staff recommended condition these approval criteria will be met.

IV. CONCLUSION:

Overall the Hearings Officer found Applicant in this case collaborated with a multitude of interested persons and agencies. The Hearings Officer believes Applicant's proposal in this case is generally sensitive to the interests of those interested persons and agencies.

The Hearings Officer was required to address two rather sticky issues: (1) the meaning of slope setback and, (2) the necessity of multiuse paths along the proposed private roadways. The Hearings Officer, based upon the evidence in the record and relevant Deschutes County Code language, found that "slope setback" in the context of DCC 19.22.050 means no more or less than the literal language used in the Code: "there shall be a minimum setback of 30 feet from the edge of **any** slope which exceeds 20%." [emphasis added by the Hearings Officer] The Hearings Officer agreed with Applicant's suggestion that a condition of approval be included stating that "all buildings observe

the 30-foot setback imposed by DCC 19.22.050 H" would adequately address the "slope setback" issue. The Hearings Officer included such a condition in the approval of the application.

The second issue involved Applicant's request to construct 24-foot private roads with **no** multiuse paths. The Hearings Officer found that DCC 17.48.140(B)(1) and DCC 17.48 Table A (Notes 8 and 10) required multiuse paths "if private roads are constructed to a width of less than 28-feet." The Hearings Officer found that since the private roads are proposed to be 24-foot multiuse paths are required.

Additional issues were raised by Staff and Applicant that the Hearings Officer found less controversial.

Included in the "additional issues" was a request by Applicant to "bond" for required improvements associated with the Tentative Plan. The Hearings Officer found that Applicant's suggested "bonding" option was authorized by DCC 17.24.120. The Hearings Officer included a condition of approval related to the Applicant's option to "bond" improvements. Applicant also requested that a modification of Staff's proposed condition of approval #16 as it related to the McClain Drive improvement scheduling (See Wisco Power Point presentation, page 22 and Staff Memo, page 3). Similarly, Applicant requested modification to Staff proposed condition #21. The Hearings Officer found that the request to modify conditions #16 and #21 were generally reasonable and appropriate.

One record submission (Root letter dated July 23, 2019) requested an additional trail connection from the Subject Property to Shevlin Park. The Hearings Officer noted that the proposed trail connection would run through the proposed "No Build Zone" and also through the "Conservation Zone." The Hearings Officer found that the advantages of an additional trail connection were outweighed by the wildfire prevention and wildfire preservation goals for which the "No Build Zone" and "Conservation Zone" were designed to protect.

The Hearings Officer found that with conditions of approval the application met all relevant approval criteria.

Other permits may be required. The Applicant is responsible for obtaining any necessary permits from the Deschutes County Building Division, the Deschutes County Environmental Soils Division and the Deschutes County Road Department, as well as any required state and federal permits.

V. DECISION:

APPROVAL, subject to the following suggested conditions of approval

VI. CONDITIONS OF APPROVAL:

1. Master Plan, Tentative Plan, and Final Plat: This approval is based on the information submitted by the Applicant. The subdivision final plat shall be in substantial conformity with the provisions of the tentative plan for the subdivision, as approved. Any substantial change will require a new land use application.
2. Building Height: **Prior to the issuance of building permits for individual lots**, no building or structure shall be hereafter erected, enlarged or structurally altered to exceed 30 feet in height, except for schools which shall not exceed 45 feet in height.
3. Lot Sizes: **Prior to final plat approval for each phase**, the lot sizes for each lot shall be confirmed by the County that they meet the requirements of DCC 19.22.050(A) in the context of DCC 19.04.040.
4. Setback and Yard Requirements: **As an ongoing condition of approval**, the subdivision lots shall observe the applicable setback and yard requirements of DCC 19.22.050(C)-(G) excepting for Lots 60 to 67 which shall have a 50-foot setback along their eastern property line.
5. Slope Setback: **As an ongoing condition of approval**, all future building improvements on the Subject Property shall observe the 30-foot setback imposed by DCC 19.22.050(H).
6. HOA Reporting: **As an ongoing condition of approval**, the Homeowners Association, or any successor or equivalent organization or if no such organization then individual owners of lots shall be required to annually review of the Wildlife Habitat Management Plan. Further, the County may request the Homeowners Association, or any successor organization or if no such organization then individual owners of lots, shall provide within a reasonable timeframe documentation demonstrating compliance with the reporting, annual review, maintenance, and other responsibilities associated with the Wildlife Habitat Management Plan, Wildfire Mitigation Plan, and Stewardship Community Plan, as described in DCC 19.22.060 (C)-(F).
7. Street Parking: **As an ongoing condition of approval**, on-street parking is prohibited on private roads within the subdivision.
8. Parking: **Prior to the issuance of building permits for dwellings on individual lots**, each dwelling unit shall provide a minimum of two paved parking spaces.
9. Fire District Approval: **Prior to issuance of building permit on individual lots**, the Applicant shall submit confirmation from the Bend Fire Department verifying the proposed lots, phase, or entire master plan area will conform to applicable Fire Code as it relates to the following requests from the Fire Department:
 - Prior to the issuance of construction permits the Applicant shall provide to the City of Bend Fire Department a proposed plan for fire apparatus access to the construction site.
 - Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200. A Knox® Key Switch shall be installed at all electronic gates.
 - An approved water supply capable of supplying the required fire flow for fire protection shall be provided.

- Documentation of the available fire flow shall be provided to the fire code official prior to final approval of the water supply system. Provide the City of Bend Fire Department a fire flow analysis.
 - New and existing buildings shall have approved address numbers.
10. **Road Approval: Prior to final plat approval of each phase**, streets and roads held for private use and indicated on the tentative plan shall be approved by the County Road Department. Streets and roads for public use shall be dedicated to the public without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public or private utilities.
 11. **Conformity to Tentative Plan: Prior to final plat approval of each phase**, the subdivision final plat shall be in substantial conformity with the provisions of the tentative plan for the subdivision, as approved. Applicant shall submit as-constructed improvement plans to Road Department pursuant to DCC 17.24.070(E)(1) and submit plat to Road Department for approval pursuant to DCC 17.24.060(R)(2), 100, 110 and 140.
 12. **Explanations: Prior to final plat approval of each phase**, explanations for all common improvements required as conditions of approval of the tentative plan of the subdivision shall be recorded and referenced on the subdivision plat.
 13. **Domestic Water Supply Certification: Prior to final plat approval of each phase**, the Applicant shall provide to the County a certification by the city-owned domestic water supply system that water will be available to the lot line of each and every lot depicted in the proposed subdivision plat.
 14. **Sewage Disposal Statement: Prior to final plat approval of each phase**, a statement that no sewage disposal facility will be provided to the purchaser of any parcel depicted in the proposed partition plat, where the Department of Environmental Quality has approved the proposed method or an alternative method of sewage disposal for the subdivision in its evaluation report described in ORS 454.755 (Fees for certain reports on sewage disposal) (1)(b). A copy of any such statement, signed by the Applicant and indorsed by the County shall be filed by the Applicant with the Real Estate Commissioner and shall be included by the commissioner in the public report made for the subdivision under ORS 92.385 (Examination). If the making of a public report has been waived or the partition is otherwise exempt under the Oregon Subdivision Control Law, the Applicant shall comply with the applicable provisions of ORS 92.090(5)(c).
 15. **Existing Easements and Rights-of-Way: Prior to final plat approval of each phase**, the Applicant shall note all easements of record and existing rights-of-way on the final plat, in conformance with DCC 17.24.060.
 16. **Location of Roads: Prior to final plat approval of each phase**, the surveyor preparing the plat shall, on behalf of Applicant, submit information showing the location of the existing roads in relationship to the rights of way to Deschutes County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights of way. In no case shall a road improvement be located outside of a dedicated road right of way. If research reveals that inadequate right of

way exists or that the existing roadway is outside of the legally established or dedicated right of way, additional right of way will be dedicated as directed by Deschutes County Road Department to meet the applicable requirements of DCC Title 17 or other County road standards. This condition is pursuant to DCC 17.24.060(E), (F), and (G) and 17.24.070(E)(8).

17. **Fire District Approval: Prior to final plat approval of each phase**, the Applicant shall submit confirmation from the Bend Fire Department verifying the proposed phase or entire master plan will conform to applicable Fire Code as it relates to the following requests from the Fire Department:
- Provide the City of Bend Fire Department a proposed site plan illustrating compliant fire apparatus access.
 - Approved signs or other approved notices or markings that include the words NO PARKING-FIRE LANE shall be provided for fire apparatus roads to prohibit parking on both sides of fire lanes 20 to 26 feet wide and on one side of fire lanes more than 26 feet to 32 feet wide.
 - Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus (60,000 pounds GVW) and shall be surfaced (asphalt, concrete or other approved driving surface) as to provide all weather driving capabilities.
 - Provide a site plan to the City of Bend Fire Department illustrating a secondary access point.
 - Provide the City of Bend Fire Department a site plan illustrating the quantity and locations of fire hydrants.
 - Provide a site plan that illustrates any parking restrictions.
18. **Adjacent McClain Drive Improvement: Prior to final plat approval of the first phase**, the Applicant shall submit evidence that McClain Drive on Map and Tax Lot 1711260000400 has been either constructed to City of Bend standards, or the Applicant has submitted an improvement agreement **and** performance assurance for such construction. Any improvement agreement shall be reviewed and approved by Deschutes County Community Development and County Counsel to assure the agreement(s) is/are in a form that meets the requirements of DCC 17.24.120. Documentation related to performance assurances shall be in a form satisfactory to the Deschutes County Community Development and County Counsel. During all phases, fire access shall be provided as required by the Bend Fire Department.
19. **Street Names: Prior to final plat approval of each phase**, no street name shall be used which will duplicate or be confused with the name of an existing street in a nearby city or in the County. Street names and numbers shall conform to the established pattern in the County and shall require approval from the County Property Address Coordinator. The north-south collector road shall be named McClain Drive north of the intersection of "Road A" and "Road D", and shall be named Sage Steppe south of the same intersection. All roads shall be named in conformance with the provision of the Deschutes County uniform road naming system set forth in DCC Title 16.
20. **Utility Easements: Prior to final plat approval of each phase**, all required utility easements shall be shown on the final plat. Easements shall be provided along property lines when necessary for the placement of overhead or underground utilities, and to provide the

subdivision or partition with electric power, communication facilities, street lighting, sewer lines, water lines, gas lines or drainage. Such easements shall be labeled "Public Utility Easement" on the tentative and final plat; they shall be at least 12 feet in width and centered on lot lines where possible, except utility pole guyline easements along the rear of lots or parcels adjacent to un-subdivided land may be reduced to 10 feet in width.

21. **Grading:** **Prior to the issuance of building permits on individual lots**, the Applicant shall demonstrate cut slope ratios shall not exceed one foot vertically to one and one half feet horizontally, fill slope ratios shall not exceed one foot vertically to two feet horizontally, and grading plans shall comply with DCC 17.36.230.
22. **Water and Sewer Lines:** **Prior to curbing and paving new streets**, water mains and water and sewer lines shall be constructed and installed to County and City standards and specifications. Evidence of approved completion of the water mains and lines to the City of Bend's standards shall be submitted to the Planning Division for review.
23. **Public Water System:** **Prior to final plat approval of each phase**, plans for the water system shall be submitted and approved by the appropriate city, state, or federal agency. The water system shall be constructed and operational, with lines extended to the lot line of each and every lot depicted in the proposed phase, or the Applicant has submitted an improvement agreement and performance assurance. Any improvement agreement shall be reviewed and approved by Deschutes County Community Development and County Counsel to assure the agreement(s) is/are in a form that meets the requirements of DCC 17.24.120. Documentation related to performance assurances shall be in a form satisfactory to the Deschutes County Community Development and County Counsel.
24. **Road Improvement Plans** **Prior to final plat approval of each phase**, the Applicant shall submit a complete set of certified mylar improvement plans to the Road Department Director for approval. Public and private road design and construction shall be in accordance with all applicable sections of DCC 17.48. Applicant shall submit public and private road improvement plans to Road Department for approval **prior to commencement of construction** pursuant to DCC 17.40.020 and 17.48.060. Improvements shall be constructed under the inspection of a registered professional engineer consistent with ORS 92.097 and DCC 17.40.040.
25. **Road Maintenance Covenant:** **Prior to final plat approval of each phase**, Maintenance of all public and private roads, including multiuse paths, shall be assigned to a home owners association by covenant pursuant to DCC 17.16.040, 17.16.105, 17.48.160(A), and 17.48.180(E). Applicant shall submit covenant to Road Department for review and shall record covenant with the County Clerk upon Road Department approval. A copy of the recorded covenant shall be submitted to the Community Development Department prior to final plat approval.
26. **Drainage:** **Prior to final plat approval of each phase**, the Applicant shall provide certification by a licensed professional engineer that drainage facilities have been designed and constructed to receive and/or transport at least a design storm as defined in the current Central Oregon Stormwater Manual created by Central Oregon Intergovernmental Council and all surface drainage water coming to and/or passing through the development or

roadways. The engineer's certification shall confirm that all drainage features have been designed and constructed to comply with DCC 17.48.190.

- 27. Driveway Approach Permits: **Prior to the issuance of building permits on individual lots,** the Applicant shall obtain driveway access permits for any new access points to a public right-of-way pursuant to DCC 17.48.210(A).
- 28. Mountain Bike Trails: **As an ongoing condition of approval,** mountain bicycle trails used for transportation shall have a two-foot minimum tread width and a six-foot minimum clearing width centered over the trail, and a minimum overhead clearance of seven feet. Trails used solely for recreational use may be narrower with less clearing of vegetation.
- 29. Multiuse Paths on Private Roads. **As an ongoing condition of approval,** Applicant must show, on the final plat for each phase a minimum 8-foot multiuse path along all private roads excepting for (1) an 8-foot hard surface trail is required on a segment of Road A between the collector road (extension of McClain Drive and Sage Steppe) and the nature trail running north between lots 3 and 4 and (2), an 8-foot hard surface trail is required on a segment of Road D between the collector road (extension of McClain Drive and Sage Steppe) and the nature trail running north/northeast between lots 72 and 73.
- 30. Road 'A' Natural Path: The natural path intersecting on the north side of Road A, between lots 3 and 4, shall be 20-feet in width (shown on various site plans as having a width of 15-feet).

VII. DURATION OF APPROVAL:

This Master Plan and Tentative Plan approval shall be void after two years from the date this decision becomes final, unless the final plat has been submitted to the Planning Division for final approval within that time period, an extension is sought under DCC 22.36.010, or the preliminary plat approval has been initiated as defined in DCC 22.36.020.

This decision becomes final twelve (12) days after the date of mailing, unless appealed by a party of interest.

Dated this 28th day of August, 2019



Gregory J Frank, Hearings Officer

owner	agent	address	cityStZip	type	cdd id
Empire Construction	Kevin Spencer	63026 Lower Meadow Drive, Suite 200	Bend, OR 97701	HOD	19-500-MP
Rio Lobo Investments, LLC		95 SW Scalehouse Loop #100	Bend, OR 97702	HOD	19-500-MP
BECON Engineering, Erik Huffman, PE	Jose Banuelos, PE	549 SW Mill View Way, Suite 100	Bend, OR 97702	HOD	19-500-MP
Retia Consult, LLC	Tammy Wisco, PE, AICP	PO Box 831	Bend, OR 97709	HOD	19-500-MP
Hearings Officer Greg Frank		ELECTRONIC		HOD	19-500-MP
911	ATTN: EVAN CLARK	20355 POE SHOLES DR., STE. 300	Bend, OR 97701	HOD	19-500-MP
BEND FIRE DEPT.	LARRY MEDINA	1212 SW SIMPSON, SUITE B	Bend, OR 97702	HOD	19-500-MP
BEND METRO PARKS & REC.	ATTN: QUINN KEEVER	799 SW COLUMBIA ST.	Bend, OR 97702	HOD	19-500-MP
DESCHUTES CO. ROAD DEPT.		61150 S.E. 27TH ST.	Bend, OR 97702	HOD	19-500-MP
DESCHUTES CO. SR. TRANS. PLANNER	PETER RUSSELL	ELECTRONIC		HOD	19-500-MP
DESCHUTES CO. SURVEYOR		61150 SE 27TH ST.	Bend, OR 97702	HOD	19-500-MP
DESCHUTES CO. ASSESSOR		ELECTRONIC		HOD	19-500-MP
DESCHUTES CO. BUILDING SAFETY		ELECTRONIC		HOD	19-500-MP
PROPERTY ADDRESS COORDINATOR		ELECTRONIC		HOD	19-500-MP
OREGON DEPT OF FISH & WILDLIFE	ATTN: ANDREW WALCH	61374 PARRELL RD.	BEND, OR 97702	HOD	19-500-MP
SCHWABE WILLIAMSON & WYATT	ATTN: TIA LEWIS	360 SW BOND STREET, SUITE 500	BEND, OR 97702	HOD	19-500-MP
MARTEN LAW	ATTN: MYLES CONWAY	404 SW COLUMBIA STREET, SUITE 212	BEND, OR 97702	HOD	19-500-MP
STEVEN L WALLAERT & PAM ROBBINS		3312 NW SHEVLIN RIDGE	BEND, OR 97701	HOD	19-500-MP
CENTRAL OREGON LANDWATCH	ATTN: PAUL DEWEY	50 SW BOND STREET, SUITE 4	BEND, OR 97702	HOD	19-500-MP
RICK ROOT		590 NW LINDSAY COURT	BEND, OR 97701	HOD	19-500-MP
CHARLEY MILLER		18890 GOLDEN MANTLE LOOP	BEND, OR 97703	HOD	19-500-MP
RICK ARTHUR		19009 PARK COMMONS DRIVE	BEND, OR 97701	HOD	19-500-MP

SUBDIVISION BOND

Bond # **SUR0005683**

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned

Empire Westgate, LLC, 63026 NE Lower Meadow Dr., Suite 200, Bend, OR 97701

_____ as Principal,

and Frankenmuth Mutual Insurance Company

1 Mutual Avenue, Frankenmuth, MI 48787

a corporation of the State of Michigan and authorized to do business in the

State of OR, as Surety, are hereby held and firmly bound unto the

Deschutes County, Community Development Department, 117 NW Lafayette Avenue, Bend, OR 87708-6005

_____ as Oblige,

in the penal sum of One Hundred Sixty Thousand Seventy Four and no 00/100 (\$160,074.00) Dollars

for the payment of which, well and truly to be made we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

WHEREAS, it is proposed to make certain improvements:

Improvements of Phase 8 with Deschutes County within the Westgate Subdivision

WHEREAS, the Deschutes County, Community Development Department

has approved said plan upon the execution and delivery of this bond.

NOW, THEREFORE, the condition of this obligation is such that if the above bounden Principal shall construct the improvements shown above, and complete said work to satisfaction of the

Deschutes County, Community Development Department

and in accordance with the present standard specifications of the Deschutes County, Community Development Department

Therefore, then this obligation shall be void, otherwise the same remain in full force and effect: it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

Signed, sealed and dated this 10th day of March, 2022

Empire Westgate, LLC

Principal

By: 

Frankenmuth Mutual Insurance Company

Surety

By:  Craig Sherman/Attorney-in-Fact


Helen Nadirsha, Witness

STATE OF ILLINOIS (
(SS
COUNTY OF COOK (

I, Karen N. Genoff A Notary of Public of Cook County, State of Illinois do Hereby
Certify that Craig Sherman Attorney in Fact of Frankenmuth Mutual Insurance
Company Who is Personally Known to me to be the Same Person Whose Name is
Subscribed to the Foregoing Instrument, Appeared Before Me This Day in person
and Acknowledged That he Signed, Sealed, and Delivered Said Instrument, For and
on Behalf of Frankenmuth Mutual Insurance Company Incorporated in the State of
Michigan for the Uses and Purposes Therein Set Forth.

Given Under My Hand and Notarial Seal at My Office in Northfield, Illinois in
Said County This

10th Day of March , 2022

My Commission Expires

[Handwritten signature of Karen N. Genoff]
NOTARY Karen N. Genoff



FRANKENMUTH MUTUAL INSURANCE COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that Frankenmuth Mutual Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the State of Michigan, having its principal office at 1 Mutual Avenue, Frankenmuth, Michigan 48787, does hereby nominate, constitute and appoint:

Craig Sherman, Ted Sherman, Karen Genoff, Helen Nadirsha

Their true and lawful attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal, acknowledge and deliver any and all bonds, contracts and undertakings of suretyship, with the exception of Financial Guaranty Insurance, provided, however, that the penal sum of any one such instrument shall not exceed the sum of:

Fifty Million and 00/100 Dollars (\$50,000,000)

This Power of Attorney is granted pursuant to the following Resolution duly adopted at a meeting of the Board of Directors of Frankenmuth Mutual Insurance Company:

"RESOLVED, that the President, Senior Vice President or Vice President and each of them under their respective designations, hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer of the Company, qualifying the attorney(s) named in the given power of attorney, to execute on behalf of, and acknowledge as the act and deed of Frankenmuth Mutual Insurance Company on all bonds, contracts and undertakings of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 10th day of September, 2018.



Frankenmuth Mutual Insurance Company
By [Signature]
Frederick A. Edmond, Jr.,
President and Chief Operating Officer

STATE OF MICHIGAN
COUNTY OF SAGINAW) ss:

Sworn to before me, a Notary Public in the State of Michigan, by Frederick A. Edmond, Jr., to me personally known to be the individual and officer described in, and who executed the preceding instrument, deposed and said the Corporate Seal and his signature as Officer were affixed and subscribed to said instrument by the authority of the Company.

IN TESTIMONY WHEREOF, I have set my hand, and affixed my Official Seal this 10th day of September, 2018.

[Signature] (Seal)
Dianne L. Voss, Notary Public
Saginaw County, State of Michigan
My Commission Expires July 23, 2024



I, the undersigned, Vice President of Frankenmuth Mutual Insurance Company, do hereby certify that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and is in full force and effect as of this date.

IN WITNESS WHEREOF, I have set my hand and affixed the Seal of the Company, this 10th day of March, 2022

[Signature]
Andrew H. Knudsen, Vice President

ALL CORRESPONDENCE RELATED TO BOND VALIDATION AND/OR A CLAIM SHOULD BE DIRECTED TO THE DIRECTOR OF SURETY, 701 US ROUTE ONE, SUITE 1, YARMOUTH, ME 04096



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, May 11, 2022

SUBJECT: Preparation for Public Hearing: Deschutes County Road Department Nighttime Noise Variance (File No. 247-22-000243-V)

RECOMMENDED MOTION:

None. This work session is intended to prepare the Board for a public hearing on the subject Noise Variance, scheduled for May 18, 2022.

BACKGROUND AND POLICY IMPLICATIONS:

Staff will provide background and prepare the Board for a public hearing on May 18, 2022, to consider a request for a nighttime (10 p.m. – 6 a.m.) Noise Variance (File No. 247-22-000243-V) to construct bridge approach repairs and pavement rehabilitation on Tumalo Road and Deschutes Market Road between Tumalo Place and 19th Street. The nighttime work is expected to take approximately three weeks and will begin after June 1, 2022, and be completed by August 31, 2022.

BUDGET IMPACTS:

None.

ATTENDANCE:

Tarik Rawlings, Associate Planner



MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

FROM: Tarik Rawlings, Associate Planner

DATE: May 4, 2022

SUBJECT: Deschutes County Road Department Noise Variance request - Work Session

The Board of County Commissioners (Board) is conducting a work session on May 11, 2022, in preparation for a public hearing on May 18, 2022, to consider a request for a nighttime (10 p.m. – 6 a.m.) Noise Variance (File No. 247-22-000243-V) to construct bridge approach repairs and pavement rehabilitation on Tumalo Road and Deschutes Market Road between Tumalo Place and 19th Street. The nighttime work is expected to take approximately three weeks and will begin after June 1, 2022, and be completed by August 31, 2022.

I. SUMMARY

The Deschutes County Road Department is requesting a nighttime Noise Variance to construct bridge approach repairs and pavement rehabilitation on Tumalo Road and Deschutes Market Road between Tumalo Place and 19th Street. Due to high daytime traffic volumes in the project vicinity (Average Daily Traffic of 7,369), construction needs to be performed during nighttime hours (10 p.m. – 6 a.m.).

Single-lane closures will be required to perform the work, requiring temporary traffic control via flagging and pilot car operations. Performing construction during nighttime hours will reduce the inconvenience to the traveling public by reducing the length of traffic queues resulting from flagging operations. Traffic volumes during nighttime hours within the project corridor are approximately 90% less than daytime volumes, according to a Road Department traffic study conducted within the project limits in August 2019. Daytime traffic volumes are high enough to cause extensive traffic queues upstream of the project on Tumalo Road/Tumalo Place and Deschutes Market Road, as well as US Highway 97. Nighttime construction will minimize the propensity for traffic queues to become excessively long and cause delays to the public.

II. RECOMMENDATION

It is the Road Department’s opinion that the public nuisance caused by nighttime construction will be benign in comparison to the nuisance caused by traffic queues resulting from daytime construction. In the interest of the safety and convenience of both the traveling public and the

workers within the construction work zone, staff recommends the subject noise variance request be approved.

III. NEXT STEPS

The Board will hold a public hearing on May 18, 2022.

ATTACHMENTS:

1. 247-22-000243-V Application Materials, including project area and noise impact area map
2. Document # 2022-378 – Draft Noise Permit



File No. 247- 22-000243-V

COMMUNITY

NOISE PERMIT APPLICATION
INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

1. Complete the application form and provide appropriate original signatures. To ensure timely processing of your application, all materials must be submitted on single-sided, 8.5" x 11" paper. Do not use binders, tabs/dividers, staples or tape.
2. Include a copy of the current deed showing the property owners.
3. Attach correct fee.
4. Include a plot plan that shows all property lines and existing and proposed structures, parking, landscaping, lighting, etc.
5. If this application includes oversized plans a single, reduced-size plan no larger than 11" x 17" with graphic scale shall also be included.
6. All applicable standards and criteria must be addressed in writing prior to acceptance of the application. Detailed descriptions, maps and other relevant information must be attached to the application.

FEE: _____

Applicant's Name (print): Cody Smith, Deschutes Co. Road Dept.
 Mailing Address: 61150 SE 27th St.
 Applicant's Email Address: Cody.Smith@deschutes.org

Phone: (541) 322-7113
 City/State/Zip: Bend, OR 97702

Property Owner's Name (if different)*: N/A
 Mailing Address: N/A

Phone: (N/A)
 City/State/Zip: N/A

1. Property Description: T16S R 12E, Section 26. (No tax lots - County road right of way)
2. Property Zone(s): EFU & RI
Property Size (acres or sq. ft.): N/A
3. Lot of Record? (State reason): N/A, County road right-of-way
4. Property Address: N/A, County road right-of-way
5. Present Use of Property: County road, Rural Collector/Rural Arterial
6. Existing Structures: Five public highway bridges (BR#18394, BR#18208, BR#18299, BR#18493, BR#18494)
7. Request:

Deschutes County Road Department (Road Department) is requesting a nighttime noise variance to construct bridge approach repairs and pavement rehabilitation on Tumalo Rd and Deschutes Market Rd between Tumalo Place and 19th Street. Due to high daytime traffic volumes in the Project

vicinity (Average Daily Traffic of 7,369), construction needs to be performed during nighttime hours (10 p.m.-6 a.m.).

Single-lane closures will be required to perform the work, requiring temporary traffic control in the form of flagging and pilot car operations. Performing construction during nighttime hours will reduce the inconvenience to public road users by reducing the length of traffic queues resulting from flagging operations. Traffic volumes during nighttime hours within the Project corridor are approximately 90% less than daytime volumes, according to a Road Department traffic study conducted within the Project limits in August 2019. Daytime traffic volumes are high enough to cause extensive traffic queues upstream of the Project on Tumalo Rd/Tumalo Pl and Deschutes Market Rd, as well as US 97. Nighttime construction will minimize the propensity for traffic queues to become excessively long and cause delays to the public.

It is the Road Department’s opinion that the public nuisance caused by nighttime construction will be benign in comparison to the nuisance caused by traffic queues resulting from daytime construction. The Project is located primarily in a Rural Industrial (RI)-zoned area, and there are no residences in the immediate vicinity of the Project site. The Federal Highway Administration (FHWA) “Construction Noise Handbook” describes construction equipment noise levels and provides the following information for all equipment that may be used on the project. This data is for the period beginning in 1970 through 2006. The information is for both stationary and mobile sources and for steady, intermittent, and impulse type noises.

Equipment Description	Spec. 721.560 L_{max} @ 50 feet (dBA, slow)	Actual measured L_{max} @ 50 feet (dBA, slow) (Samples averaged)
Backhoe	80	78
Compactor (ground)	80	83
Compressor (air)	80	78
Dump Truck	84	76
Flat Bed Truck	84	74
Front End Loader	80	79
Generator	82	81
Grader	85	N/A
Pavement Scarifier	85	90
Paver	85	77
Pickup Truck	55	75
Pneumatic Tools	85	85
Roller	85	80
Vacuum Street Sweeper	80	82
Warning Horn	85	83

Source: Table 9.1 RCNM Default Noise Emission Reference Levels and Usage Factors

For each generic type of equipment listed in the table, the following information is provided:

- The specification “Spec” limit for each piece of equipment expressed as L_{max} level in dBA “slow” at a reference distance of 50 feet from the loudest side of the equipment.
- The measured “Actual” emission level at 50 feet for each piece of equipment is based on hundreds of emission measurements performed on Central Artery/Tunnel (CA/T) work sites.

The National Highway Institute (NHI) provides additional information on what occurs when there are no barriers or objects between the source and receptor. Noise levels decrease 6 dBA each time

the distance from the point source doubles in paved environments. In locations where soft ground exists, an additional 1.5 dBA decrease occurs per doubling distance. When the above numbers differ, the Road Department has used the higher (noisier) values when determining the dBAS for the equipment to be used.

The Planning Division utilizes the Department of Environment Quality (DEQ) standards for noise as set forth in Oregon Administrative Rule (OAR) 340-035-0035 when reviewing noise permits under Deschutes County Code (DCC) 8.08. The Road Department has used Table 8, New Industrial and Commercial Noise Source Standards, from OAR 340-035-0035 to determine the potential noise impact area. Table 8 sets a nighttime standard of 50 dBA for noise. The highest dBA from the equipment table is 90 dBA, resulting in a potential noise impact area of a 3,200-foot radius from Tumalo Road and Tumalo Place. At 3,200 feet the highest expected dBA from any equipment would be 48 dBA, which meets the DEQ standard. Approximately 227 properties are within the noise radius area, many of which do not have residences. The impacted properties are shown on the attached map, Figure 1.

The nighttime work is expected to begin no sooner than June 1, 2022. The duration of the nighttime work is anticipated to be no more than three weeks. The work will be completed by August 31, 2022. Nighttime work will occur between 10 p.m. and 6 a.m. Sunday night through Friday morning each week. The Road Department will issue a media release to inform the travelling public no later than one week prior to start of work. Additionally, portable changeable message boards will be installed on Deschutes Market Rd and Tumalo Rd no later than two weeks prior to start of work.


8. Property will be served by:

Sewer: N/A as project occurs on public right of way and no sewer is present.

Onsite Disposal System: N/A, on-site portable systems will be used as necessary.

9. Domestic Water Source: N/A.

To the best of my knowledge, the proposal complies with all previous conditions of approval and all other applicable local, state, and federal laws. By signing this application, I acknowledge that Deschutes County planning staff may make a site visit(s) to the address(es) listed on this application in order to evaluate the property(ies) with the Deschutes County Code criteria applicable to the land use request(s) submitted. Please describe any special circumstances regarding a potential site visit:

Applicant's Signature:  Date: 2022.02.22 13:36:52 -08'00' _____ Date: _____

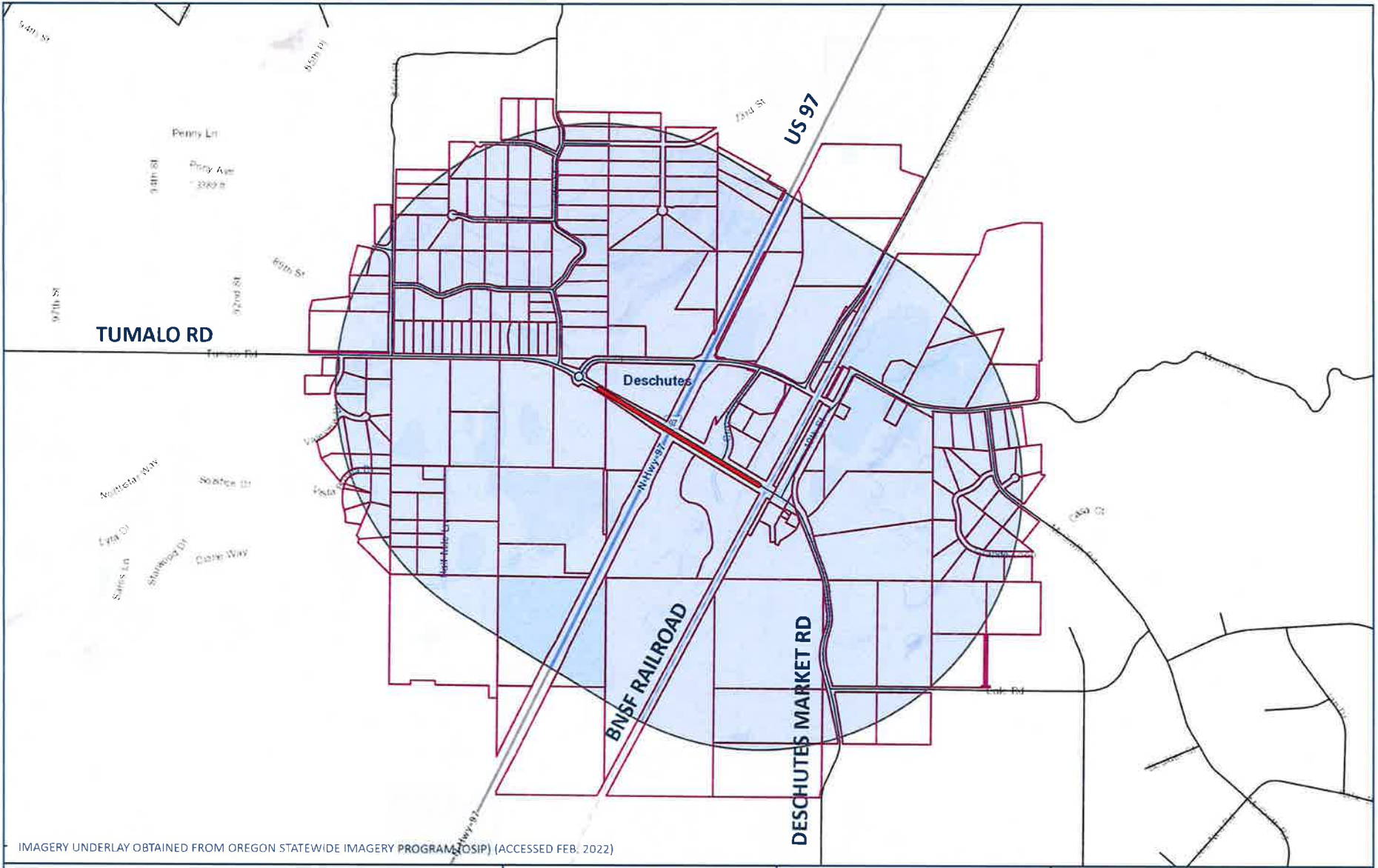
Property Owner's Signature (if different)*: _____ Date: _____

Agent's Name (if applicable): _____ Phone: (____) _____




Mailing Address: _____ City/State/Zip: _____

Agent's Email Address: _____

***If this application is not signed by the property owner, a letter authorizing signature by the applicant must be attached. By signing this application, the applicant understands and agrees that Deschutes County may require a deposit for hearings officers' fees prior to the application being deemed complete. If the application is heard by a hearings officer, the applicant will be responsible for the actual costs of the hearings officer.**



IMAGERY UNDERLAY OBTAINED FROM OREGON STATEWIDE IMAGERY PROGRAM (OSIP) (ACCESSED FEB. 2022)

<p>LEGEND</p> <ul style="list-style-type: none"> — PROJECT SEGMENT IMPACTED PROPERTIES NOISE IMPACT AREA (3,200 FEET) DESCHUTES COUNTY ROADS 	<p>N</p>  <p>0 500 1,000 2,000</p>  <p>Feet</p>	<p>NOISE IMPACT AREA FIGURE 1</p> <p>PAVING OF DESCHUTES JUNCTION</p> <p>FEB. 2022 SHT. 1 OF 1</p>	 <p>DESCHUTES COUNTY ROAD DEPARTMENT</p>
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REVIEWED

LEGAL COUNSEL

05/11/2022 Item #17.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

NOISE PERMIT

PURSUANT TO DESCHUTES COUNTY CODE (DCC) CHAPTER 8.08

LOCATION: Tumalo Road and Deschutes Market Road from 19th Street to Tumalo Place.

FILE NUMBER: 247-22-000243-V

OWNER: Deschutes County Road Department

OPERATOR: Cody Smith

PHONE: (541) 322-7113

PROJECT DESCRIPTION: The applicant requests approval of a noise permit to allow nighttime construction to construct bridge approach repairs and pavement rehabilitation on Tumalo Road and Deschutes Market Road between Tumalo Place and 19th Street.

DATES AND TIMES OF PROJECT: Nighttime construction activities are anticipated to begin no sooner than June 1, 2022, and are anticipated to be completed no later than August 31, 2022. Nighttime construction will occur Sunday night through Friday morning, between 10:00 p.m. and 6:00 a.m.

FINDINGS: The Board of County Commissioners (“Board”) finds that a public necessity exists for granting this permit for construction hours between 10:00 p.m. and 6:00 a.m. The Board bases the findings on evidence in the record and testimony at the hearing. These findings include:

1. A need to construct bridge approach repairs and pavement rehabilitation on Tumalo Road and Deschutes Market Road between Tumalo Place and 19th Street;
2. A desire to conduct construction from 10:00 p.m. to 6:00 a.m. to minimize traffic delays, decrease the risk of construction related accidents on Tumalo Road and Deschutes Market Road, and reduce potential traffic queues affecting US 97 and County roads.

CONDITIONS OF APPROVAL:

1. Construction activities may be conducted beginning June 1, 2022.
2. Fifteen days prior to commencing any construction activities, the Owner shall notify all property owners who testified at the public hearing for this permit of the dates and times the construction activities will occur.
3. This permit expires August 31, 2022.
4. THE APPROVED PERMIT SHALL BE RETAINED ON-SITE UNTIL THE PROJECT IS COMPLETE.
5. BY ACCEPTANCE OF THIS PERMIT, OWNER/OPERATOR CONSENT TO ALLOW BOTH COUNTY CODE ENFORCEMENT AND LAW ENFORCEMENT PERSONNEL TO COME ON THE PREMISES FOR WHICH THE PERMIT HAD BEEN GRANTED FOR THE PURPOSE OF INSPECTION AND ENFORCEMENT OF THE TERMS AND CONDITIONS OF THE PERMIT AND DCC 8.08, AND ANY OTHER APPLICABLE LAWS OR ORDINANCES.

Dated this _____ of _____, 2022

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner



**BOARD OF
COMMISSIONERS**

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 11, 2022

SUBJECT: 2022 Spay & Neuter Grant Program

RECOMMENDED MOTION:

Discuss potential 2022 Spay & Neuter Grant solicitation process and set total award amount

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County's Dog License and Pet Identification Application forms provide an opportunity for residents to make a voluntary donation to support spay and neuter services. These donations, typically supplemented by general fund, are offered to local non-profit organizations which provide spay and neuter services in Deschutes County for both feral animals and pets whose owners are unable or unlikely to access or afford the procedure. Grant funds may also be used for educational or promotional programs focused on encouraging or expanding spay and neuter procedures in Deschutes County.

To be eligible for the program, applicants must be designated by the Internal Revenue Service as a 501(c)3 tax-exempt organization, located in Deschutes County and able to certify that grant proceeds will be used to support services benefiting Deschutes County residents.

The table below shows the last five years of contributions as well as total grant awards offered.

	2016-17	2017-18	2018-19	2019-20	2020-21
Dog License contribution	\$4,299	\$5,516	\$5,107	\$5,215	\$6,056
General Fund contribution	\$8,201	\$6,984	\$7,893	\$4,785	\$6,944
Total amount offered	\$12,500	\$12,500	\$13,000	\$10,000	\$13,000
Number of grant recipients	4	3	2	4	6

Also attached to this staff report is the draft news release regarding the solicitation as well as the Spay and Neuter Grant application form.

BUDGET IMPACTS:

Historically, the Spay & Neuter Grant program has utilized funds from the dog license donation fund with any additional funding supplemented by the general fund. As of Monday May 2, the dog license donation fund holds \$3,967.08.

ATTENDANCE:

Laura Skundrick, Administrative Services



MEDIA RELEASE

MEDIA CONTACT:

Laura Skundrick, 541-330-4627

Bend, Oregon

May 11, 2022

**Deschutes County Spay and Neuter Grant Program
Solicitation for Applications Open**

Deschutes County is soliciting applications for grants to local non-profit organizations which provide and/or promote spay and neuter services. A total of \$xx is available for multiple grant awards. Applications must be received in the Deschutes County Department of Administrative Services **no later than 5:00 p.m. on Wednesday June 8, 2022.**

The County's Dog License and Pet ID Applications provide an opportunity for residents to make a voluntary donation to support spay and neuter services. These donations, which are periodically supplemented by additional funds authorized by the Board of County Commissioners, are offered to local non-profit organizations which provide spay and neuter services in Deschutes County for pets whose owners are unable to access or afford the procedure. Grant funds may also be used for educational or promotional programs focused on encouraging or expanding spay and neuter procedures in Deschutes County.

To be eligible for the program, applicants must be designated by the Internal Revenue Service as a 501(c)(3) tax-exempt organization, located in Deschutes County, and able to certify that grant proceeds will be used in support of Deschutes County residents.

Applications will be evaluated based on several criteria, including organizational stability, connection to grant funding objectives, and ability to leverage the grant funds to access other financial support.

Application forms are available to download from the County's website at <https://www.deschutes.org/bcc/page/grant-opportunities> or may be requested by email to laura.skundrick@deschutes.org. Applications must be submitted electronically by attaching the completed application form and attachments to an email addressed to laura.skundrick@deschutes.org. **Completed applications must be received in the Deschutes County Department of Administrative Services no later than 5:00 p.m. on Wednesday June 8, 2022. Late or incomplete applications will not be considered.**

###



Deschutes County Spay and Neuter Grant Program 2022

Deschutes County is soliciting grant applications from local non-profit organizations that provide or promote spay and neuter services. A total of \$xx is available for multiple grant awards. **Applications must be received by Wednesday, June 8, at 5 p.m.**

In November 2007, Deschutes County Dog License and Pet ID Applications were revised to allow a voluntary donation to support spay and neuter services. Each year, these donations, periodically supplemented by additional funds authorized by the Board of County Commissioners, are offered to non-profit organizations which provide spay and neuter services in Deschutes County for pets whose owners are unable to access or afford the procedure. Grant funds may also be used for educational or promotional programs focused on encouraging or expanding spay and neuter procedures in Deschutes County.

To be eligible for the program, applicants must be designated by the Internal Revenue Service as a 501(c)(3) tax-exempt organization, located in Deschutes County, and able to certify that grant proceeds will be used in support of Deschutes County residents.

Applications will be evaluated based on several criteria, including organizational stability, connection to grant funding objectives, and ability to leverage the grant funds to access other financial support.

The deadline to submit an application is 5:00 p.m. on Wednesday June 8, 2021 and grants are expected to be awarded by the end of July. **Completed applications must be received in the Deschutes County Department of Administrative Services by the stated deadline. Late or incomplete applications will not be considered.**

Completed applications must be sent electronically to laura.skundrick@deschutes.org.

Deschutes County Spay and Neuter Grant Application 2022

A complete application will consist of the following:

1. This cover sheet, signed and dated.
2. Narrative responses to the questions which appear at the end of this document submitted on no more than three separate, single-sided, single-spaced pages.
3. Attachments as follows:
 - a. Proof of the organization’s 501(c)(3) tax-exempt status in the form of a letter from the Internal Revenue Service (IRS).
 - b. An operating budget specific to the proposed program, project, or activity.
 - c. A financial statement that shows actual total revenue and expenditures for the most recently completed 12-month period.
 - d. A roster of the organization’s current Board of Directors.

Submit the completed application electronically to laura.skundrick@deschutes.org no later than 5:00 p.m. on June 8, 2021. Late or incomplete applications will not be considered. Information or materials submitted instead of or in addition to those specifically requested in this application form will not be reviewed.

Contact Information

Organization Name _____

Address _____

City _____ **Zip Code** _____

Phone Number _____ **Alternate Phone Number** _____

Fax Number _____ **Email Address** _____

Website _____

By signing below, I certify the following:

1. All information provided to Deschutes County in this application is correct.
2. I am authorized by the governing board of the stated organization to submit this grant application.
3. This organization is in good standing with the IRS and retains its official 501(c)(3) tax-exempt status.
4. This organization is located in Deschutes County.
5. Any proceeds from a grant award will be used in support of Deschutes County residents.

Print Name _____

Signature _____

Title _____

Date _____

On a separate sheet(s), please briefly answer the following questions:

1. Describe the history of your organization.
2. State the mission of your organization.
3. Describe the leadership and structure of your organization.
4. Describe the primary activities conducted by your organization.
5. Describe the specific program, project, or activity that a Spay and Neuter grant would support, if awarded.
6. Describe how this program, project, or activity would positively impact the goal of promoting or expanding spay and neuter procedures.
7. Explain the anticipated outcomes of this program, project, or activity and describe how success will be measured.

Attach:

1. Proof of the organization's 501(c)(3) tax-exempt status in the form of a letter from the Internal Revenue Service (IRS).
2. An operating budget specific to the proposed program, project, or activity.
3. A financial statement that shows actual total revenue and expenditures for the most recently completed 12-month period.
4. A roster of the organization's current Board of Directors.